



DOCKET NO.: CSAV-0015

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:

William J. Purcell and Edward M. Martin

Application No.: 10/677,555

Filing Date: October 2, 2003

For: Secure Promotions

Confirmation No.: 9541

Group Art Unit: 3621

Examiner: not yet assigned

DATE OF DEPOSIT: June 8, 2004

I HEREBY CERTIFY THAT THIS PAPER IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS FIRST CLASS MAIL, POSTAGE PREPAID, ON THE DATE INDICATED ABOVE AND IS ADDRESSED TO THE COMMISSIONER FOR PATENTS, P.O. BOX 1450, ALEXANDRIA, VA 22313-1450.

TYPED NAME: Michael P. Dunnam
REGISTRATION NO.: 32,611

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
Attention: Office of Petitions

STATEMENT OF FACTS IN SUPPORT OF FILING
ON BEHALF OF OMITTED INVENTORS (37 CFR § 1.47 (b))

This statement is made as to the exact facts that are relied upon to establish the diligent effort made to secure the execution of the declaration by the nonsigning inventor for the above-identified patent application before deposit thereof in the Patent and Trademark Office.

Because signing on behalf of the nonsigning inventor is by a person or entity showing a sufficient proprietary interest, this statement also recites facts as to why this action was necessary to preserve the rights of the parties or to prevent irreparable damage.

This statement is being made by the available person having first-hand knowledge of the facts recited therein.

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PATENT

IDENTIFICATION OF PERSON MAKING THIS DECLARATION OF FACTS

David B. Arney
Chief Financial Officer and Senior Vice President of Operations
CoolSavings, Inc.
360 North Michigan Avenue, 19th Floor
Chicago, Illinois 60601

LAST KNOWN ADDRESS OF THE NONSIGNING INVENTORS

William J. Purcell
3076 Sorrelwood Drive
San Ramon, California 94583

Edward M. Martin
1241 Buzzini Court
Ripon, California 95366

**DETAILS OF REFUSAL OF NONSIGNING INVENTOR
TO SIGN APPLICATION PAPERS**

As confirmed in a telephone conversation between Mr. Richard A. Schafer, the attorney of record who filed the above-referenced patent application, with Mr. Robert Egan, former Chief Operating Officer of planetU, Inc., the invention described and claimed in the above-referenced patent application was developed by inventors William J. Purcell and Edward M. Martin in the year 2000, prior to the merger of planetU, Inc. with Transora in December, 2000, while each inventor was employed by the corporation planetU, Inc. According to Mr. Egan, a patent application was not pursued by planetU, Inc. at that time because of the impending acquisition.

Inventor William Purcell was a founder and employed as Chairman of the Board and Chief Executive Officer of planetU, Inc. effective December 10, 1996. Mr. Purcell's employment agreement is ATTACHMENT A. By virtue of Mr. Purcell's fiduciary position at planetU, Inc. and Mr. Purcell's subsequent actions and representations, it is our belief that planetU, Inc., owned the above-referenced patent application and the invention described

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therein at the time of the conception thereof and at the time planetU, Inc. merged with Transora.

On December 29, 2000, planetU, Inc. merged with eCPG.net, Inc. (d/b/a Transora). The merger agreement is attached hereto as ATTACHMENT B. On September 20, 2001, Mr. Purcell entered into an employment agreement with eCPG.net, Inc. (d/b/a Transora). As set forth in paragraph 1 of that agreement (ATTACHMENT C), Mr. Purcell assumed the position of "Chief New Markets Officer" and, pursuant to paragraph 8 of that agreement "[a]ny intellectual property arising from Employee's duties while providing services for Transora described in this agreement shall be the property of the Company." As set forth in paragraph 2, the employment agreement terminated January 2, 2002, and Mr. Purcell left Transora around that time.

Inventor Edward Martin was employed as VP of Engineering of planetU, Inc. at the time of conception of the invention in the year 2000 and at the time of the merger of planetU, Inc. with Transora in December, 2000. We have been unable to obtain a copy of Mr. Martin's employment agreement with planetU, Inc. After the merger of planetU, Inc. with Transora, Mr. Martin became an employee of Transora. A copy of a document executed by Mr. Martin on September 4, 2001, evidencing Mr. Martin's receipt of the Transora Employee Handbook is attached as ATTACHMENT D. Mr. Martin left Transora about the same time as Mr. Purcell. By virtue of Mr. Martin's fiduciary position at planetU, Inc. and Mr. Purcell's subsequent actions and representations, it is our belief that planetU, Inc., owned the above-referenced patent application, and the invention described therein, at the time of the conception thereof and at the time planetU, Inc. merged with Transora.

U.S. Provisional Patent Application Serial No. 60/416,981, upon which the above-referenced parent application claims priority, was filed by the law firm of Blakely, Sokoloff, Taylor & Zafman, LLP on behalf of Transora in October, 2002. On the first page of the provisional patent application, planetU, Inc. is identified as the assignee. Unfortunately, we have no record of an actual assignment being executed or filed. ADS Alliance Data Systems, Inc. acquired certain assets of Transora, including the rights to the invention described in the priority provisional application in December, 2002. The Asset Purchase Agreement by ADS Alliance Data Systems, Inc. is attached as ATTACHMENT E.

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The above-referenced non-provisional patent application was filed by Richard A. Schafer on behalf of ADS Alliance Data Systems, Inc. on October 2, 2003. Mr. Schafer was unsuccessful in obtaining the signature of the inventors on a declaration or assignment document in connection with the filing of the non-provisional patent application.

On February 6, 2004, Coolsavings, Inc. acquired certain assets from ADS Alliance Data Systems, Inc., including the above-referenced patent application. An assignment of the above-referenced patent application from ADS Alliance Data Systems, Inc. to Coolsavings, Inc. is attached as ATTACHMENT F.

By way of letters dated March 16, 2004 (ATTACHMENTS G and H), Messrs. Purcell and Martin have been asked by representatives of Coolsavings, Inc. to sign declaration and assignment documents for the above-referenced patent application. Email correspondence evidencing the inventors' refusal to sign these documents is attached as ATTACHMENT I.

**PROOF OF NEED TO PREVENT IRREPARABLE DAMAGE OR PRESERVE THE
RIGHTS OF THE PARTIES**

The above-referenced patent application claims priority to U.S. Provisional Patent Application No. 60/416,981, filed October 8, 2002. The above-referenced patent application was filed on October 2, 2003, in order to preserve priority to the October 8, 2002, filing date of the provisional application. If this petition is not granted, the priority date, and potentially the filing date of the above-referenced patent application would be lost. The damage caused in such case would be irreparable particularly in view of the planned commercial activity by CoolSavings, Inc., the new owner of the invention. The "Secure Promotions" product which is the subject matter of the present application was recently purchased from ADS Alliance Data Systems, Inc. by Coolsavings, Inc. as part of a commercialization plan to extend product offerings in the subject matter area of the invention. Accordingly, loss of patent rights in this product would cause irreparable harm to Coolsavings, Inc. in its commercialization efforts.

As evidenced by the email correspondence attached hereto as ATTACHMENT J, diligent efforts were made by Mr. Schafer to obtain the inventors' signatures on the declaration and assignment documents prior to and immediately after the filing of the above-referenced patent application. As also evidenced by the attached email correspondence, Mr.

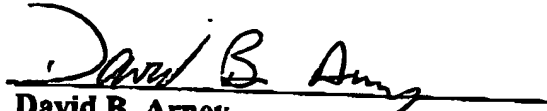
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Purcell is currently employed by Market6, Inc. (www.market6.com), a company that competes with Coolsavings, Inc. in the same market segment. In the email correspondence of ATTACHMENT J, Mr. Purcell has evidenced his concern that the present patent application may impact or limit him in the future.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Date:

June 7, 2004


David B. Arney
Chief Financial Officer and Senior
Vice President of Operations
CoolSavings, Inc.

Purcell, Bill

EMPLOYMENT AGREEMENT

This employment agreement is effective as of December 10, 1996 between planetU, Inc., a Delaware corporation, referred to as Company, and Bill Purcell, referred to as Founder.

WHEREAS, the Company desires to employ Founder and Founder desires to be employed by the Company upon the terms and conditions set forth below.

NOW, THEREFORE, Company and Founder agree as follows:

1. Employment and Election as a Director. The Company employs Founder as its Chairman of the Board and Chief Executive Officer at the Company's headquarters located in San Francisco and Founder accepts employment by the Company upon the terms and conditions herein set forth. During the term of his employment, Founder shall devote adequate time and attention to the business and affairs of the Company.

2. Term. The term of this Agreement shall commence as of December 10, 1996 and shall continue until December 10, 1999, and year to year thereafter unless terminated according to the terms hereof. This Agreement will automatically renew for annual one-year periods unless either party gives to the other written notice on or before December 10, 1999 or December 10 of each succeeding year, of such party's intent to modify, amend or terminate this Agreement according to the terms hereof.

3. Compensation and Benefits.

(a) Compensation. The Company shall pay to Founder for all services to be performed by Founder during the term of this Agreement a salary at the rate of one hundred fifty thousand dollars (\$150,000) per annum, as reduced by required withholding taxes. Founder's salary shall be payable in accordance with the Company's standard payroll practice. The Company's Compensation Committee shall conduct an annual review of the then-current level of Founder's base salary for potential increases effective December 10 of that year and shall make recommendations based upon such review to the full Board of Directors.

(b) Performance Incentive. As additional compensation for performance of the services rendered by Founder during the term of this Agreement, the Company will pay to Founder a performance incentive amount based upon the achievement of objectively quantifiable and measurable goals and objectives which shall be determined, in advance, by the Board of Directors with respect to each fiscal year of the Company. The Company's Compensation Committee shall meet shortly after execution of this Agreement to set Founder's goals and objectives for 1997. The Company's Compensation Committee shall make recommendations to the full Board of Directors as to the appropriate amount of Founder's bonus each year; however, determination of the appropriate amount of bonus shall be in the sole discretion of the full Board.

(c) Benefits. During the term of his employment or for such time as otherwise provided in this Agreement, Founder shall be entitled to participate in such vacation, expense reimbursement, benefit plans, fringe benefits, medical and dental plans, retirement plans and other programs as are offered from time to time by the Company to the Company's senior officers; provided that, as a minimum, Founder shall be entitled to:

(i) Vacation with pay of fifteen (15) days during each year of his employment hereunder, to be taken at such times and in such period as

Founder and the Company mutually determine; and

(ii) Founder shall be authorized to incur necessary and reasonable travel, entertainment, personal automobile, home officing and telecommunications expenses and other business expenses in connection with his duties hereunder. In connection with expenses pursuant to this subparagraph (ii), the Company shall reimburse Founder for such expenses upon presentation of an itemized account and appropriate supporting documentation, all in accordance with the Company's generally applicable policies.

(d) Life and Disability Insurance. The Company will maintain, at its expense, during the term of this Agreement or for such time as otherwise provided in this Agreement, life insurance, insuring Founder's life and payable to a beneficiary or beneficiaries designated by Founder in the amount of one million dollars (\$1,000,000) and disability insurance in the amount of eight thousand dollars (\$8,000) per month subject to customary terms applicable to senior officers; provided, however, that the Company's Compensation Committee shall have reasonable approval rights over the terms of such policies if the cost to the Company to maintain such policies exceeds two thousand dollars (\$2,000) per year.

(e) Stock. Bill Purcell Investments Inc., the company in which Founder is a majority stockholder (the "Investment Company"), has purchased two million two hundred fifty thousand (2,250,000) shares of the Company's common stock at a price equal to two thousand two hundred fifty dollars (\$2,250), subject to vesting upon Founder's provision of services to the Company. The Investment Company shall vest in twenty-five percent (25%) of the shares on the date hereof and in the balance of the shares in thirty-six (36) equal monthly installments on the same day of each succeeding month upon Founder's completion of each succeeding month of service with the Company. If, in the future, existing stock purchase or option agreements applicable to the founders of the Company or other officers, directors or employees are modified in a manner favorable to the option holder or stockholder, as for instance, to add registration rights or antidilution protection or to re-price such options following a decline in the value of the common stock, the Investment Company shall immediately be given the benefit of any such favorable modifications in its stock purchase documents. The terms pursuant to which the Investment Company purchased the shares are set forth in a stock purchase agreement between the Investment Company and the Company.

4. Termination.

(a) This Agreement shall terminate by reason of Founder's death or Disability. In addition, Founder may terminate this Agreement on thirty (30) days written notice to the Company. Furthermore, the Company may terminate this Agreement and Founder's employment hereunder for Good Cause on two (2) days notice. "Good Cause" shall exist if Founder has engaged in unauthorized use or disclosure of the confidential information or trade secrets of the Company, which use causes material harm to the Company, Founder's conviction of a felony under the laws of the United States or any state thereof or Founder's gross negligence. "Disability" shall mean the inability of Founder to engage in any substantial gainful activity for a period of at least sixty (60) days by reason of any medically determinable physical or mental impairment expected to result in death or to be of continuous duration of twelve (12) months or more.

(b) Should there occur a termination of Founder's employment hereunder for Good Cause, then the Company shall not be obligated to pay Founder any amount after the date of termination. Should there occur an Involuntary Termination of Founder's employment hereunder other than for Good Cause, then the Company shall pay to Founder each of the following, subject to the terms of paragraph 4(c) below:

(i) Founder's salary at the rate in effect at the time of such termination and for the period specified in paragraph 4(c) in accordance with the Company's standard payroll practice;

(ii) a pro-rated target bonus for the portion of the fiscal year up to Founder's termination of employment, provided that Founder has satisfied the required milestones;

(iii) Founder shall immediately vest in one-third (1/3) of the then unvested shares of stock acquired from the Company and any then outstanding options granted by the Company; and

(iv) continued coverage at the Company's expense under all medical plans in which Founder and Founder's dependents have participated through date of termination, provided Founder is eligible for and elects COBRA coverage, for a period extending through the earlier of one (1) year after Founder's termination of employment and the date that Founder's (or, with respect to a dependent, such dependent's) COBRA eligibility ceases.

Involuntary Termination shall mean the termination of Founder's employment which occurs by reason of:

(i) such individual's involuntary dismissal or discharge by the Company for reasons other than Good Cause, or

(ii) such individual's voluntary resignation following (A) an involuntary change in his position with the Company which materially reduces his level of responsibility, (B) an involuntary reduction in his level of compensation (including base salary, fringe benefits and eligibility to participate in corporate-performance based bonus or incentive programs) by more than twenty-five percent (25%) or (C) a relocation of such individual's place of employment by more than forty (40) miles, provided and only if such change, reduction or relocation is effected by the Company without the individual's consent.

The termination of this Agreement and Founder's employment hereunder for Good Cause shall not affect the continuing enforceability of Section 5 or Founder's continuing obligations under Sections 4(c) and 8.

(c) The Company agrees to continue Founder's salary from the date of termination until the earlier of (i) one year from the date of Founder's termination of employment or (ii) the date that Founder first engages in Competitive Activities (as defined below). Founder will be deemed to be engaged in Competitive Activities if he has any Relationship (as defined below) with any entity, including but not limited to any corporation,

partnership, limited liability company, sole proprietorship or unincorporated business (whether or not for profit) (such entity, a "Business"), that is directly competitive with the business of the Company. A Business shall only be deemed directly competitive with the business of the Company if it is engaged in the issuance of continuity marketing programs and cents off coupons via the Internet and directly connected to retailer point of sale systems for execution and clearing. Founder will be deemed to have a relationship (a "Relationship") with a Business if Founder (i) owns, manages, operates, joins or is employed by such Business, (ii) is a director, member, agent, shareholder, owner or general partner of such Business, (iii) acts as a consultant or advisor to such Business, or (iv) controls or participates in the ownership or operation of such Business; provided, however, that nothing herein shall prevent the purchase or ownership by Founder of an interest in a Business that constitutes less than one percent (1%) of the outstanding equity securities of such Business, nor in Efficient Market Services, Inc.

5. No Obligation to Mitigate Damages; No Effect on Other Contractual Rights.

(a) Founder shall not be required to mitigate damages or the amount of any payment provided for under this Agreement by seeking other employment or otherwise, nor shall the amount of any payment provided for under this Agreement be reduced by any compensation earned by Founder as a result of employment by another company after the date of termination, or otherwise.

(b) The provisions of this Agreement, and any payment provided for hereunder, shall not reduce any amount otherwise payable, or supersede, affect or in any way diminish Founder's existing rights, or rights which accrue in the future, under any applicable law or any pension benefit or welfare benefit plan, or other contract, plan or arrangement, including, without limitation, participation in stock incentive plans and deferred compensation plans. The compensation and benefits set forth in this Agreement shall in no way be construed to limit or prevent Founder from receiving or participating in other additional plans, programs, or benefits which may be made available by the Company in the future, including, without limitation, participation in stock incentive plans, retirement plans, deferred compensation plans, etc.

6. Resolution of Disputes; Arbitration. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. All fees and expenses of the arbitrator and such Association shall be paid equally by the parties.

The arbitrator shall only have authority to interpret, apply or determine compliance with the provisions set forth in this Agreement, but shall not have the authority to add to, detract from or otherwise alter the language of this Agreement.

7. Severability. In the event that any provision or portion of this Agreement shall be determined to be invalid or unenforceable for any reason by final judgment of a court of competent jurisdiction, (i) the remaining provisions or portions of this Agreement shall be unaffected thereby and shall remain in full force and effect to the fullest extent permitted by law, and (ii) if the effect of a determination that such provision is either invalid or unenforceable is to modify to Founder's detriment, reduce or eliminate any payment or benefit provided under this Agreement, the Company shall promptly negotiate and enter into an agreement with Founder containing alternative provisions (reasonably acceptable to Founder), that will restore to Founder (to the extent legally permissible) substantially the same economic, substantive and income tax

benefits Founder would have enjoyed had any such provision of this Agreement been upheld as valid and enforceable. Failure to insist upon strict compliance with any provision of this Agreement shall not be deemed a waiver of such provision or of any other provision of this Agreement.

8. Non-Interference. During the term of this Agreement and for one year thereafter, Founder will not encourage or solicit any employee of the Company to leave the Company for any reason or to devote less than all of any such employee's efforts to the affairs of the Company and will not encourage or solicit any customer, agent, vendor, distributor or representative of the Company or an entity which has a business relationship with the Company to cease doing business with the Company or to do business with any competitive enterprise in which Founder participates, provided that the foregoing shall not affect any responsibility Founder has with respect to the bona fide hiring and firing of Company personnel.

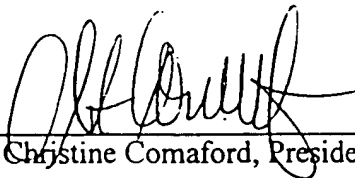
9. Successors. This Agreement shall be binding upon any successor to all or substantially all of the Company's business and/or assets. For all purposes under this Agreement, the term "Company" shall include any successor to Company's business and/or assets. Founder's rights hereunder shall inure to his personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees.

10. Relevant Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California. Any action in law or equity regarding this Agreement or Founder's rights hereunder may only be brought in the State of California or in any state in which Founder resides at the time of the commencement of such action.

11. Entire Agreement; Counterparts; Notice. This Agreement sets forth the entire understanding of the parties and supersedes all prior agreements, arrangements and communications, whether oral or written, between the parties, including all prior employment agreements. No amendment to this Agreement may be made except by a writing signed by the Company and Founder. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Notices and all other communications contemplated by this Agreement shall be in writing and shall be deemed to have been duly given when personally delivered (including facsimile) or when mailed by U.S. registered mail, return receipt requested and postage prepaid to the address most recently communicated to the other party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first set forth above.

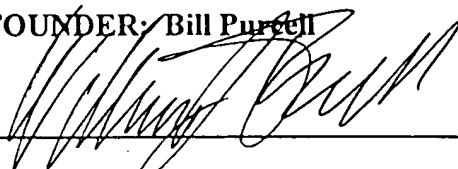
planetU, Inc.



By: Christine Comaford, President

Address: 231 Market Place, #210
San Ramon, CA 94583

FOUNDER: Bill Purcell



Address: 7201 Hart Lane
Austin, Texas 78731

AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER is dated as of December 29, 2000 (the "*Agreement*"), by and among eCPG.net, Inc., a Delaware corporation d/b/a Transora ("*Parent*"), TPU Acquisition Corporation, a Delaware corporation ("*Sub*"), and PlanetU, Inc., a Delaware corporation (the "*Company*").

RECITALS:

A. The Boards of Directors of Parent, Sub and the Company have determined that it is advisable and in the best interests of their respective stockholders for Parent, Sub and the Company to enter into a business combination upon the terms and subject to the conditions set forth herein.

B. In furtherance of such combination, the Boards of Directors of Parent, Sub and the Company have each approved the merger of Sub with and into the Company (the "*Merger*"), upon the terms and subject to the conditions set forth herein, in accordance with the applicable provisions of the Delaware General Corporation Law (the "*DGCL*").

C. Because the value of the aggregate consideration to be received by the stockholders of the Company under this Agreement is less than the aggregate liquidation preference set forth in Article IV, Division B, Section 2 of the Company's Restated Certificate of Incorporation, pursuant to the Merger, each outstanding share of common stock, par value \$0.0001 per share, of the Company, (the "*Company Common Stock*") and each outstanding share of Series A Preferred Stock, par value \$0.0001 per share ("*Series A Preferred*"), shall be converted into the right to receive no consideration and shall be cancelled in the Merger.

D. Pursuant to the Merger, each outstanding share of Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock, each of par value \$0.0001 per share, of the Company, (the "*Company Preferred Stock*"), shall be converted solely into the right to receive Parent Common Stock (as defined herein), upon the terms and subject to the conditions set forth herein.

E. For federal income tax purposes, the Merger is intended to qualify as a reorganization under the provisions of Section 368(a) of the Code (as defined herein).

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, Parent, Sub, and the Company hereby agree as follows:

ARTICLE 1.

DEFINITIONS

1.1 Defined Terms. Unless the context otherwise requires, terms in this Agreement shall have the respective meanings set forth in Appendix II.

1.2 Interpretation Provisions.

(a) The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement, and article, section, schedule and exhibit references are to this Agreement unless otherwise specified. The meaning of defined terms shall be equally applicable to the singular and plural forms of the defined terms. The terms "include" and "including" are not limiting and mean "including without limitation."

(b) References to agreements and other documents shall be deemed to include all subsequent amendments and other modifications thereto.

(c) References to statutes shall include all regulations promulgated thereunder and references to statutes or regulations shall be construed as including all statutory and regulatory provisions consolidating, amending or replacing the statute or regulation.

(d) The captions and headings of this Agreement are for convenience of reference only and shall not affect the construction of this Agreement.

(e) The parties participated jointly in the negotiation and drafting of this Agreement and the language used in this Agreement shall be deemed to be the language chosen by the parties to express their mutual intent. If an ambiguity or question of intent or interpretation arises, then this Agreement will accordingly be construed as drafted jointly by the parties to this Agreement, and no presumption or burden of proof will arise favoring or disfavoring any party to this Agreement by virtue of the authorship of any of the provisions of this Agreement.

(f) The appendices, schedules and exhibits to this Agreement are a material part hereof and shall be treated as if fully incorporated into the body of the Agreement.

(g) References herein to "knowledge", "best knowledge" or any other similar phrase that is used with respect to any party to this Agreement shall mean the actual current knowledge of the executive management of such party and it is expressly acknowledged that there is no duty on the party making any representations or statements qualified in such manner to undertake an investigation of the matter to which such party is representing.

ARTICLE 2.

THE MERGER2.1 The Merger.

(a) Effective Time. At the Effective Time (as defined in Section 2.2 hereof), and upon the terms and subject to the conditions of this Agreement and the DGCL, Sub shall be merged with and into the Company, the separate corporate existence of Sub shall cease, and the Company shall continue as the surviving corporation. The Company, as the surviving corporation after the Merger, is hereinafter sometimes referred to as the "Surviving Corporation."

(b) Closing. Unless this Agreement shall have been terminated pursuant to Section 11.1, and pending the satisfaction (or to the extent permitted, the waiver) of the conditions set forth in Articles 7 and 8, the closing of the transactions contemplated by this Agreement (the "Closing") shall take place (i) at the offices of the Company, located at 303 E. Wacker Drive, Chicago, Illinois 60601 on or before December 29, 2000 (the "Closing Date") or (ii) at such other time, date or place as Parent and the Company may mutually agree.

2.2 Effective Time. On or before the Closing Date pending the satisfaction (or to the extent permitted, the waiver) of the conditions set forth in Articles 7 and 8, and provided that this Agreement has not been terminated pursuant to Section 11.1, the parties hereto shall cause the Merger to be consummated by executing and filing a certificate of merger as contemplated by the DGCL (the "Certificate of Merger"), with the Secretary of State of Delaware as provided in Section 251 of the DGCL. The Merger shall be effective at the time indicated in such Certificate of Merger (the "Effective Time").

2.3 Effect of the Merger. At the Effective Time, the effect of the Merger shall be as provided in this Agreement, the Certificate of Merger and the applicable provisions of the DGCL.

2.4 Certificate of Incorporation; Bylaws.

(a) Certificate of Incorporation. At the Effective Time, the Certificate of Incorporation of Sub as in effect immediately prior to the Effective Time shall be the Certificate of Incorporation of the Surviving Corporation (except that Surviving Corporation shall be named and operate as "planetU, Inc."), until thereafter duly amended in accordance with applicable law and the Certificate of Incorporation of the Surviving Corporation.

(b) Bylaws. At the Effective Time, the Bylaws of Sub, as in effect immediately prior to the Effective Time, shall be the Bylaws of the Surviving Corporation until thereafter duly amended in accordance with applicable law, the Certificate of Incorporation of the Surviving Corporation and such Bylaws.

2.5 Directors and Officers. The directors of Sub immediately prior to the Effective Time shall be the initial directors of the Surviving Corporation, each to hold office in accordance

with the Certificate of Incorporation and Bylaws of the Surviving Corporation, and the officers of the Company immediately prior to the Effective Time shall be the initial officers of the Surviving Corporation, in each case until their respective successors are duly elected or appointed and qualified in the manner provided in the Certificate of Incorporation and Bylaws of the Surviving Corporation and in accordance with applicable law. Upon request of Parent, the Company shall cause each or any director and officer of the Company to tender his or her resignation prior to the Effective Time, with each such resignation to be effective as of the Effective Time.

2.6 Conversion of Securities. At the Effective Time, by virtue of the Merger and without any further action on the part of Parent, Sub, the Company or any Stockholder:

(a) **Company Stock.** Subject to Section 2.10, (i) each share of Company Common Stock and each share of Series A Preferred Stock issued and outstanding immediately prior to the Effective Time shall be converted into the right to receive no consideration and shall be cancelled in the Merger; (ii) each share of Series B Preferred Stock issued and outstanding immediately prior to the Effective Time shall be converted into the right to receive, and become exchangeable for, such number of validly issued, fully paid and nonassessable shares of Parent Common Stock as equals the Series B Exchange Ratio; (iii) each share of Series C Preferred Stock issued and outstanding immediately prior to the Effective Time shall be converted into the right to receive and become exchangeable for, such number of validly issued, fully paid and nonassessable shares of Parent Common Stock as equals the Series C Exchange Ratio; and (iv) each share of Series D Preferred issued and outstanding immediately prior to the Effective Time shall be converted into the right to receive, and become exchangeable for, such number of validly issued, fully paid and nonassessable shares of Parent Common Stock as equals the Series D Exchange Ratio. The shares of Parent Common Stock issued in connection with the Merger as a result of the conversions provided for in this Section 2.6(a)(ii), (iii) and (iv) are sometimes referred to herein as the "Merger Shares"; provided that the number of shares of Parent Common Stock that the holders of Company Preferred Stock shall have the right to receive pursuant to this Section 2.6(a) shall be subject to, and, as applicable, reduced in accordance with the provisions of, Article 2 and Article 10 of this Agreement relating to the escrow of certain shares and the availability of recourse against those shares by Parent.

(b) **Options.** Each Company Option, whether vested or unvested, to purchase shares of Company Stock which is outstanding and unexercised immediately prior to the Effective Time shall cease to represent a right to acquire shares of Company Stock and shall automatically be cancelled.

(c) **Number of Shares of Parent Common Stock Issuable.** The number of shares of Parent Common Stock to be issued in the Merger in exchange for the acquisition by Parent of all outstanding shares of Company Preferred Stock and all outstanding options, warrants, or other securities to acquire capital stock of the Company shall not exceed the Number of Parent Shares; to the extent that the number would exceed the Number of Parent Common Stock, each of the Series B Exchange Ratio, Series C Exchange Ratio, and Series D Exchange Ratio shall be reduced proportionally so that the number of shares of Parent Common Stock issued in the merger equals the Number of Parent Shares.

(d) Sub Stock. Each share of common stock, par value \$0.001 per share, of Sub issued and outstanding immediately prior to the Effective Time shall, by virtue of the Merger and without any action on the part of the holder thereof, automatically be converted into and thereafter represent one (1) validly issued, fully paid and nonassessable common share, par value \$0.001 per share, of the Surviving Corporation, so that thereafter Parent will be the sole and exclusive owner of the capital stock of the Surviving Corporation.

(e) Cancellation. Each share of Company Stock held in the treasury of the Company immediately prior to the Effective Time shall, by virtue of the Merger and without any action on the part of the holder thereof, automatically cease to be outstanding, be canceled and retired without payment of any consideration therefor and cease to exist.

(f) Fractional Shares. No certificates or scrip representing fractional shares of Parent Common Stock shall be issued in connection with the Merger. To the extent the application of the applicable Exchange Ratio to shares of Company Preferred Stock held by a Stockholder would result in a fraction of a Merger Share being issued to such Stockholder, the number of shares of Parent Common Stock issuable to such Stockholder shall be rounded up or down, as appropriate, to the next whole number of shares of Parent Common Stock. The fractional share determination shall be made individually for each share of the Company Preferred Stock such Stockholder holds after giving effect to the holdback of the Escrow Shares (as defined below), it being recognized that, as provided in Section 2.10, only whole shares will be held back by Parent.

2.7 Surrender of Certificates

(a) Delivery of Certificates. After the Effective Time, Parent shall make available, and each holder of Company Preferred Stock shall be entitled to receive, upon surrender to Parent or its designated representative of (i) any certificate or certificates evidencing Company Preferred Stock ("Certificate" or "Certificates") for cancellation, together with a duly-executed and completed letter of transmittal and (ii) a duly completed investor questionnaire and a Right of First Refusal Agreement to effect Section 4.2, such number of shares of Parent Common Stock issuable to such holder pursuant to Section 2.6(a)(ii); (iii) and (iv), less such holder's proportional share of the Merger Shares, rounded to the nearest full share of Parent Common Stock for each such holder, which Merger Shares shall be held back by Parent pursuant to Section 2.10.

(b) Cancellation of Company Stock. Upon surrender of each Certificate and delivery by Parent of the Merger Shares to be delivered in exchange therefor, such Certificate shall forthwith be canceled. Until so surrendered, each Certificate shall be deemed for all corporate purposes to evidence only the right to receive upon such surrender the aggregate number of Merger Shares into which the Company Preferred Stock represented thereby shall have been converted in accordance with the terms and upon the conditions of this Agreement (including, without limitation, the requirement that a portion of such Merger Shares be retained by Parent). At the Effective Time, each share of Company Common Stock and each share of Series A Preferred Stock will be cancelled.

(c) Distributions With Respect to Unexchanged Shares of Company Preferred Stock. No dividends or other distributions with respect to Parent Common Stock declared made after the Effective Time and with a record date after the Effective Time will be paid to the holder of any unsurrendered Certificate with respect to the shares of Parent Common Stock represented thereby until the holder of record of such Certificate shall surrender such Certificate. Subject to applicable law, promptly following surrender of any such Certificate, there shall be paid to the record holder of the certificates representing whole shares of Parent Common Stock issued in exchange therefor, without interest, at the time of such surrender, the amount of dividends or other distributions with a record date after the Effective Time, if any, theretofore payable with respect to such whole shares of Parent Common Stock.

2.8 No Further Ownership Rights in Shares of Company Preferred Stock. The shares of Parent Common Stock delivered upon the surrender for exchange of Company Preferred Stock in accordance with the terms hereof shall be deemed to have been issued in full satisfaction of all rights pertaining to such shares of Company Preferred Stock, and after the Effective Time there shall be no further registration of transfers of Company Preferred Stock which were outstanding immediately prior to the Effective Time on the records of the Surviving Corporation. If, after the Effective Time, the Certificates are presented to the Surviving Corporation for any reason, they shall be canceled and exchanged as provided in this Article 2.

2.9 Lost, Stolen or Destroyed Certificates. In the event any Certificates shall have been lost, stolen or destroyed, Parent shall issue in exchange for such lost, stolen or destroyed Certificates, upon the making of an affidavit of that fact by the holder thereof, such shares of Parent Common Stock as may be required pursuant to Section 2.7, *provided, however,* Parent may, in its sole discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed Certificates to agree to indemnify Parent (including by delivery of a bond in such sum as Parent may reasonably direct) against any claim that may be made against Parent with respect to the Certificates alleged to have been lost, stolen or destroyed.

2.10 Escrow of Merger Shares. Notwithstanding the other provisions of this Article 2, Parent shall retain 1,095 shares of Parent Common Stock (the "Escrow Shares"), which shall be deducted from the Merger Shares and disbursed in accordance with Section 10. The Escrow Shares shall be withheld from the Parent Common Stock otherwise deliverable to the Preferred Stockholders and, together with distributions with respect to such Escrow Shares in accordance with Section 10.4, shall constitute the "Escrow Fund."

2.11 Taking of Necessary Action; Further Action. Each of Parent, Sub, and the Company will take all such reasonable lawful action as may be necessary or appropriate in order to effect the Merger in accordance with this Agreement as promptly as practicable. If, at any time after the Effective Time, any such further action is necessary or desirable to carry out the purposes of this Agreement and to vest Parent with full right, title and possession to all the property, rights, privileges, power and franchises of the Company, the officers and directors of Sub, Parent and the Company immediately prior to the Effective Time are fully authorized in the name of their respective corporations or otherwise to take, and will take, all such lawful and necessary action.

2.12 Plan of Reorganization. This Agreement is intended to constitute a "plan or reorganization" within the meaning of section 1-368-2(g) of the income tax regulations promulgated under the Code. From and after the date of this Agreement and until the Effective Time, each party hereto shall use its reasonable efforts to cause the Merger to qualify, and will not knowingly take any action, cause any action to be taken, fail to take any action or cause any action to fail to be taken which action or failure could prevent the Merger from qualifying as a reorganization under the provisions of Section 368 of the Code. Following the Effective Time, neither the Company nor Parent or any of their affiliates shall knowingly take any action, cause any action to be taken, fail to take any action or cause any action to fail to be taken which action or failure could prevent the Merger from qualifying as a reorganization under the provisions of Section 368 of the Code. Notwithstanding the foregoing, however, each party shall be expressly permitted to take, cause or permit to be taken any action (or fail to take, cause or permit any action) if such action (or the failure of such action to occur) is contemplated by this Agreement or any document related to the transactions contemplated by this Agreement or otherwise contemplated by the parties and their respective officers.

ARTICLE 3.

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

As an inducement of Parent to enter into this Agreement, the Company hereby makes, as of the date hereof and, except as otherwise noted, as of the Closing Date, the following representations and warranties to Parent, except as otherwise set forth in written disclosure schedule (the "*Company Schedule of Exceptions*") delivered to Parent prior to the date hereof, a copy of which is attached hereto as Appendix III. The Company Schedule of Exceptions shall have sections that are numbered to correspond to the various sections of this Article 3 setting forth certain exceptions to the representations and warranties contained in this Article 3 and certain other information called for by this Agreement. Unless otherwise specified, no disclosure made in any particular section of the Company Schedule of Exceptions shall be deemed made in any other section of the Company Schedule of Exceptions unless expressly made therein (by cross-reference or otherwise) or the Company Schedule of Exceptions otherwise contains express disclosure which from a reading of such disclosure it is reasonably clear the exception applies to another section.

3.1 Organization of the Company. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, with all requisite corporate power and authority to conduct the Business as it is presently being conducted and to own or lease, as applicable, the Assets owned or leased by it. The Company is duly qualified to do business as a foreign corporation and is in good standing in each jurisdiction in which such qualification is necessary under applicable law as a result of the conduct of the Business or the ownership of its properties and where the failure to be so qualified would have a Company Material Adverse Effect. Each jurisdiction in which the Company is qualified to do business as a foreign corporation is set forth in Section 3.1 of Appendix III.

3.2 Capitalization of the Company.

(a) Authorized Capitalization. As of the date of this Agreement, the authorized capitalization of the Company consists of (i) 20,169,200 shares of Company Common Stock of which 3,718,212 shares are issued and outstanding; (ii) 3,300,000 shares of Series A Preferred Stock of which 3,000,000 are issued and outstanding; (iii) 5,300,000 shares of Series B Preferred Stock of which 3,544,776 are issued and outstanding; (iv) 4,230,000 shares of Series C Preferred Stock of which 2,365,379 are issued and outstanding; and (v) 7,000,000 shares of Series D Preferred Stock of which 7,000,000 are issued and outstanding. The Company has no other capital stock authorized, issued or outstanding. **Appendix I** sets forth the name of each holder of shares of Company capital stock, as well as the number of shares of Company capital stock held by each such holder.

(b) Options and Warrants. (i) As of the date of this Agreement, 3,106,639 shares of Company Common Stock are reserved for issuance upon the exercise of outstanding Company Options. Section 3.2(b)(i) of **Appendix III** sets forth the name of each holder of Company Options, as well as the number of the Company Options held by each such holder, the number of Company Common Stock for which each such Company Option is exercisable, the date upon which each such Company Option becomes exercisable and the price per share of Company Common Stock for which each such Company Option is exercisable (without taking into account whether or not such Company Option is in fact exercisable on the date hereof). Attached as **Schedule 3.2(b)** is a true and correct copy of the plan document governing all Company Options, which contains the forms of option agreement used in all cases.

(ii) As of the date of this Agreement, 498,482 shares of Company Common Stock are reserved for issuance upon the exercise of outstanding warrants ("Company Warrants"). Section 3.2(b)(ii) of **Appendix III** sets forth the name of each holder of outstanding Company Warrants, as well as the number of Company Stock for which each such Company Warrant is exercisable and the price per share of Company Stock for which each such Company Warrant is exercisable (without taking into account whether or not such Company Warrant is in fact exercisable on the date hereof or as a result of the transactions contemplated by this Agreement).

(c) No Other Capital Stock, Options, Warrants. Except for the Company Options, Company Warrants, Series A Preferred Stock and the Company Preferred Stock referred to above, the rights set forth in the Amended and Restated Investors' Rights Agreement dated July 19, 1999 (the "**Investors Rights Agreement**") and the Right of First Refusal and Co-Sale Agreement dated July 19, 1999 (the "**Co-Sale Agreement**") there are no outstanding options, warrants, convertible securities or rights of any kind to purchase or otherwise acquire any shares of capital stock or other securities of the Company.

(d) Valid Issuances. All outstanding shares of Company capital stock are, and any shares of Company Common Stock issued upon exercise of any Company Option and Company Warrants before the Effective Time will be, validly issued, fully paid and non-assessable and not subject to any preemptive rights created by statute, the Company's Certificate of Incorporation or Bylaws, or any Contract. The Company Options have been, and the share

Company capital stock issued before the Effective Time have been or will be, issued in compliance with all federal and state corporate and securities laws.

3.3 Stockholders' Agreements, etc. Except as set forth in Section 3.3 of **Appendix III** and other than Company Options, the Investor Rights Agreement, the Co-Sale Agreement and Company Warrants, there are no stockholder agreements, voting trusts, proxies or other agreements or understandings with respect to or concerning the purchase, sale or voting of the capital stock of the Company.

3.4 Authorization. The Company has all necessary corporate or other power and authority to enter into this Agreement and the Ancillary Agreements to which the Company is a party, and has taken all corporate or other action necessary to consummate the transactions contemplated hereby and thereby and to perform its obligations hereunder and thereunder. This Agreement has been duly executed and delivered by the Company, and this Agreement is, and upon execution and delivery each of the Ancillary Agreements to which the Company is a party will be, a valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except that enforceability may be limited by the effect of (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the rights of creditors or (b) general principles of equity (regardless of whether enforceability is considered in a proceeding at law or in equity).

3.5 Officers and Directors. Section 3.5 of **Appendix III** contains a true, correct and complete list of all the officers and directors of the Company.

3.6 Bank Accounts. Section 3.6 of **Appendix III** contains a list of all of the Company's bank accounts, safe deposit boxes and persons authorized to draw thereon or have access thereto.

3.7 Subsidiaries, Etc. The Company does not own or hold any equity interest of any kind in any other Person.

3.8 Real Property. The Company leases all real property necessary for the conduct of its business as presently conducted. The Company has not in the past owned, does not now own and has not entered into any agreement to acquire any real property. Section 3.8 of **Appendix III** sets forth all Leases pursuant to which Facilities are leased by the Company (as lessee), true and correct copies of which have been delivered to Parent. Such Leases constitute all Leases, subleases or other occupancy agreements pursuant to which the Company occupies or uses Facilities. Except as set forth in Section 3.8 of **Appendix III**, Company has good and valid leasehold title to, and enjoys peaceful and undisturbed possession of, all leased property described in such Leases (the "**Leased Property**"), free and clear of any and all Encumbrances other than any Permitted Encumbrances which would not permit the termination of the Lease therefor by the lessor. With respect to each such parcel of Leased Property (i) there are no pending or, to the knowledge of the Company, threatened condemnation proceedings relating to, or any pending or, to the knowledge of the Company, threatened Actions relating to, the Company's leasehold interests in such Leased Property or any portion thereof, (ii) neither the Company nor, to the knowledge of the Company, any third party has entered into any sublease, license, option, right, concession or other agreement or arrangement, written or oral, granting to

any person the right to use or occupy such Leased Property or any portion thereof or interest therein; except in connection with a Permitted Encumbrance, and (iii) the Company has received notice of any pending or threatened special assessment relating to such Leased Property or otherwise has any knowledge of any pending or threatened special assessment relating thereto. To the Company's knowledge, there have been no material default by the Company under any such Lease.

3.9 Personal Property.

(a) General. The Company owns or leases all personal property Assets necessary for the conduct of its business as presently conducted, and the personal property Assets (taken as a whole) are in such operating condition and repair (subject to normal wear and tear) as is necessary for the conduct of its business as presently conducted.

(b) Owned Personal Property. Except as set forth in Section 3.9(b) of **Appendix III**, the Company has good and marketable title to all such personal property owned by it, free and clear of any and all Encumbrances other than Permitted Encumbrances. With respect to each such item of personal property (i) there are no Leases, subleases, licenses, options, rights, concessions or other agreements, written or oral, granting to any party or parties the right of use of any portion of such item of personal property, (ii) there are no outstanding options or rights of first refusal in favor of any other party to purchase any such item of personal property or any portion thereof or interest therein and (iii) there are no parties (other than the Company or its employees, agents or representatives) who are in possession of or who are using any such item of personal property.

(c) Leased Personal Property. The Company has good and valid leasehold title to all of such Fixtures and Equipment, vehicles and other tangible personal property Assets leased by it from third parties, free and clear of any and all Encumbrances other than Permitted Encumbrances which would not permit the termination of the lease therefor by the lessor. Section 3.9(c) of **Appendix III** sets forth all Leases for personal property involving annual payments in excess of \$25,000, true and correct copies of which have been delivered to Parent.

3.10 Contracts.

(a) Disclosure. Section 3.10 of **Appendix III** sets forth a complete and accurate list of all of the Contracts of the following categories:

(i) Contracts not made in the ordinary course of business involving amounts greater than \$25,000;

(ii) License agreements or royalty agreements, whether the Company is the licensor or licensee thereunder (excluding licenses that are commonly available on standard commercial terms, such as software "shrink-wrap" licenses);

(iii) Confidentiality and non-disclosure agreements (whether the Company is the beneficiary or the obligated party thereunder);

(iv) Contracts or commitments involving future expenditures or Liabilities, actual or potential, in excess of \$100,000 per year after the date hereof or otherwise material to the Business or the Assets;

(v) Contracts or commitments relating to commission arrangements with others that are material to the Business;

(vi) Employment contracts, consulting contracts, severance agreements, "stay-bonus" agreements and similar arrangements, including Contracts (A) to employ or terminate executive officers or other personnel and other contracts with present or former officers or directors of the Company or (B) that will result in the payment by, or the creation of any Liability of the Company, the Stockholders or Parent to pay any severance, termination, "golden parachute," or other similar payments to any present or former personnel following termination of employment or otherwise as a result of the consummation of the transactions contemplated by this Agreement involving amounts greater than \$100,000;

(vii) Indemnification agreements other than provisions of agreements entered into in the ordinary course of business;

(viii) Promissory notes, loans, agreements, indentures, evidences of indebtedness, letters of credit, guarantees, or other instruments relating to an obligation to pay money, whether the Company shall be the borrower, lender or guarantor thereunder (excluding credit provided by the Company in the ordinary course of business to purchasers of its products and obligations to pay vendors in the ordinary course of business and consistent with past practice) involving amounts greater than \$100,000;

(ix) Contracts containing covenants limiting the freedom of the Company, or any officer, director, Employee or Affiliate of the Company, to engage in any line of business or compete with any Person that relates directly or indirectly to the Business;

(x) Any Contract with the federal, state or local government or any agency or department thereof;

(xi) Any Contract or other arrangement with a Related Party involving amounts greater than \$5,000;

(xii) Leases of real or personal property involving annual payments of more than \$25,000; and

(xiii) Any other Contract under which the consequences of a default or termination would reasonably be expected to have a Material Adverse Effect on the Company, individually or in the aggregate.

Complete and accurate copies of all of the Contracts listed in Section 3.10 of Appendix III, including all amendments and supplements thereto, have been delivered to Parent.

The Company has included as part of Section 3.10 of Appendix III a brief summary of the material terms of each oral Contract.

(b) Absence of Defaults. Except as set forth in Section 3.10(b) of Appendix III, to the Company's knowledge, all of the Contracts material to the conduct of the Business of the Company are valid, binding and enforceable on or by the Company and, to the best of the Company's knowledge, on or by the other parties thereto in accordance with their terms, except as the enforceability thereof may be limited by (i) applicable bankruptcy, insolvency, moratorium, reorganization, fraudulent conveyance or similar laws in effect which affect the enforcement of creditors' rights generally, or (ii) general principles of equity whether considered in a proceeding at law or in equity, with no existing (or to the best of the Company's knowledge threatened) material Default or dispute.

3.11 No Conflict or Violation: Consents. Except as set forth in Section 3.11 of Appendix III, none of the execution, delivery or performance of this Agreement or any Ancillary Agreement, the consummation of the transactions contemplated hereby or thereby, nor compliance by the Company with any of the provisions hereof or thereof, will to the best of the Company's knowledge (a) violate or conflict with any provision of the governing documents of the Company, (b) violate, conflict with, or result in a breach of or constitute a default (with or without notice or the passage of time) under, or result in the termination of, or accelerate the performance required by, or result in a right to terminate, accelerate, modify or cancel under, or require a notice under, or result in the creation of any Encumbrance upon any of its Assets under, any Contract, sublease, sublicense, franchise, permit, indenture, agreement or mortgage for borrowed money, instrument of indebtedness, security interest or other arrangement to which the Company is a party or by which the Company is bound or to which any of its Assets are subject, (c) violate any applicable Regulation or Court Order or (d) impose any Encumbrance on any of its Assets or its Business. Except as set forth in Section 3.11 of Appendix III, no notices to, declaration, filing or registration with, approvals or Consents of, or assignments by, any Persons (including any federal, state or local governmental or administrative authorities) are necessary to be made or obtained by the Company in connection with the execution, delivery or performance of this Agreement or any Ancillary Agreement to which it is a party or the consummation of the transactions contemplated hereby or thereby.

3.12 Permits. Section 3.12 of Appendix III sets forth a complete list of all material Permits, all of which are as of the date hereof, and will be as of the Closing Date, in full force and effect. The Company and its predecessors have, and at all times have had, all material Permits required under any applicable Regulation in its operation of the Business or in its ownership of the Assets, and owns or possesses such Permits free and clear of all Encumbrances. The Company is not in default, nor has the Company received any notice of any claim of default, with respect to any such Permit. Except as otherwise governed by law, all such Permits are renewable by their terms or in the ordinary course of business without the need to comply with any special qualification procedures or to pay any amounts other than routine filing fees and, except as set forth in Section 3.12 of Appendix III, will not be materially adversely affected by the completion of the transactions contemplated by this Agreement or the Ancillary Agreements.

3.13 Financial Statements, Books and Records.

(a) General. The Financial Statements are complete; are in accordance with the Company's Books and Records and fairly present in all material respects the financial condition, results of operations and cash flows of the Company as of the dates and for the periods indicated thereby, in accordance with GAAP consistently applied throughout the periods covered thereby (except as otherwise expressly indicated in the notes to the Financial Statements).

(b) Internal Controls. The Company maintains a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed with management's authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP and to maintain accountability for its Assets, (iii) access to its Assets is permitted only in accordance with management's authorization and (iv) the recorded accountability for its Assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(c) Books and Records. The Books and Records, in reasonable detail, accurately and fairly reflect in all material respects the activities of the Company and the Business and have been provided to Parent for its inspection.

(d) All Accounts Recorded. The Company has not engaged in any transaction, maintained any bank account or used any corporate funds except for transactions, bank accounts or funds which have been and are reflected in the normally maintained Books and Records.

(e) Corporate Records. The stock records and minute books of the Company and its predecessor that have been delivered to Parent fully reflect all minutes of meetings, resolutions and other material actions and proceedings of its stockholders and board of directors and all committees thereof, all issuances, transfers and redemptions of capital stock of which the Company is aware and contain true, correct and complete copies of their respective Certificate of Incorporation and Bylaws and all amendments thereto through the date hereof.

3.14 Absence of Certain Changes or Events. Except as set forth in Section 3.14 of Appendix III and as contemplated by this Agreement and the Ancillary Agreements, since the Balance Sheet Date there has not been any:

(a) Company Material Adverse Change;

(b) failure to operate the Business in the ordinary course so as to use all commercially reasonable efforts to preserve the Business intact and to preserve the continued services of the Company's employees and the goodwill of suppliers, customers and others having business relations with the Company or its Representatives;

(c) resignation or termination of any officer, director, manager or any employee whose presence is material to the Company's ability to carry on the Business, or any increase in the rate of compensation payable or to become payable to any officer, director or manager or Representative of the Company (other than in connection with general, regularly-scheduled reviews and pay increases), including the making of any loan to, or the payment, grant

or accrual of any bonus, incentive compensation, service award or other similar benefit to, any such Person, or the addition to, modification of, or contribution to any Employee Plan;

(d) any payment, loan or advance of any amount to or in respect of, or the sale, transfer or lease of any properties or the Assets to, or entering into of any Contract with, any Related Party except regular compensation or reimbursements to Employees;

(e) sale, assignment, license, transfer or Encumbrance of any of the Assets, tangible or intangible, singly or in the aggregate, other than sales, assignments, licenses, transfers or Permitted Encumbrances in the ordinary course of business and consistent with past practice;

(f) new Contracts, or extensions, modifications, terminations or renewals thereof, except for Contracts entered into, modified, terminated, extended or renewed in the ordinary course of business and consistent with past practice;

(g) actual or, to the best of the Company's knowledge, threatened termination of any material customer account or group of accounts or actual or, to the best of the Company's knowledge, threatened material reduction in purchases or royalties payable by any such customer or occurrence of any event that is likely to result in any such termination or reduction;

(h) disposition or lapsing of any Proprietary Rights of the Company, in whole or in part, or to the best of Company's knowledge any disclosure of any trade secret, process or know-how to any Person not a Representative of the Company and subject to a non-disclosure agreement;

(i) change in accounting methods or practices by the Company;

(j) revaluation by the Company of any of the Assets, including writing off or establishing reserves with respect to goods, notes or accounts receivable (other than for which adequate reserves have been previously established);

(k) damage, destruction or loss (whether or not covered by insurance) materially adversely affecting the Assets, the Business or, to the best of the Company's knowledge, the prospects of the Company;

(l) declaration, setting aside or payment of any dividend or distribution in respect of any capital stock of the Company or any redemption, purchase or other acquisition of any equity securities of the Company;

(m) issuance or reservation for issuance by the Company of, or commitment by it to issue or reserve for issuance, any shares of capital stock or other equity securities or obligations or securities convertible into or exchangeable for shares of capital stock or other equity securities;

(n) increase, decrease or reclassification of the capital stock of the Company;

(o) amendment of the Certificate of Incorporation or Bylaws of the Company;

- (p) capital expenditure or execution of any lease or any incurring of liability therefor by the Company, involving payments or obligations in excess of \$25,000 in the aggregate;
- (q) failure to pay any material obligation of the Company when due;
- (r) cancellation of any indebtedness in excess of \$10,000 or waiver of any rights of substantial value to the Company, except in the ordinary course of business and consistent with past practice;
- (s) indebtedness incurred by the Company for borrowed money or any commitment to borrow money entered into by the Company, or any loans made or agreed to be made by the Company in excess of \$10,000;
- (t) liability in excess of \$10,000 incurred by the Company except in the ordinary course of business and consistent with past practice, or any increase or change in any assumptions underlying or methods of calculating any bad debt, contingency or other reserves;
- (u) payment, discharge or satisfaction of any Liabilities of the Company other than the payment, discharge or satisfaction in the ordinary course of business and consistent with past practice of Liabilities reflected or reserved against in the Financial Statements or incurred in the ordinary course of business and consistent with past practice since the Balance Sheet Date;
- (v) acquisition of any equity interest in any other Person; or
- (w) agreement by the Company directly or indirectly to do any of the foregoing.

3.16 Litigation. Except as set forth in Section 3.16 of Appendix III or Section 3.23 of Appendix III, there is no Action, pending or, to the best of the Company's knowledge, threatened or anticipated (i) against, relating to or affecting the Company, any of the Assets or the Company's officers and directors as such, (ii) which seeks to enjoin or obtain damages in respect of the transactions contemplated hereby or by the Ancillary Agreements or (iii) with respect to which there is a reasonable likelihood of a determination which would prevent the Company from consummating the transactions contemplated hereby. To the best of the Company's knowledge, there is no basis for any Action, which if adversely determined against the Company, its directors or officers, or any other Person could reasonably be expected to result in a loss to the Company, individually or in the aggregate, in excess of \$25,000. There are presently no outstanding judgments, decrees or orders of any court or any governmental or administrative agency against or affecting the Company, the Business or any of the Assets. Section 3.16 of Appendix III contains a complete and accurate description of all Actions since January 1, 1999 to which the Company or any predecessor of the Company has been a party or, to the best of the Company's knowledge, which otherwise relate to any of the Assets or the Company's officers or directors as such, or any such Actions which were settled prior to the institution of formal proceedings, other than Actions brought by the Company for collection of monies owed in the ordinary course of business.

3.17 Labor Matters.

(a) General. The Company is not a party to any labor agreement with respect to its Employees with any labor organization, group or association and has not experienced any attempt by organized labor or its representatives to make the Company conform to demands of organized labor relating to its Employees or to enter into a binding agreement with organized labor that would cover the Employees of the Company. There is no unfair labor practice charge or complaint against the Company pending before the National Labor Relations Board or any other governmental agency arising out of the Company's activities, and to the best of its knowledge the Company has not known of any facts or information which would give rise thereto; there is no labor strike or labor disturbance pending or, to the best of its knowledge, threatened against the Company nor has the Company received notice that any grievance is currently being asserted against it; and the Company has not experienced a work stoppage or other labor difficulty. There are no material controversies pending or, to the knowledge of the Company, threatened between the Company and its Employees, and the Company is not aware of any facts which could reasonably result in any such controversy.

(b) Compliance. The Company is in material compliance with all applicable Regulations respecting employment practices, terms and conditions of employment, wages and hours, equal employment opportunity, and the payment of social security and similar taxes and is not engaged in any unfair labor practice. To the best of the Company's knowledge, the Company is not liable for any claims for past due wages or any penalties for failure to comply with any of the foregoing.

(c) Severance Obligations. Except as set forth in Section 3.17(c) of Appendix III, the Company has not entered into any severance, "stay-bonus" or similar arrangement in respect of any present or former Employee that will result in any obligation (absolute or contingent) of Parent or the Company to make any payment to any present or former Employee following termination of employment or upon consummation of the transactions contemplated by this Agreement (whether or not employment is continued for any specified period after the Effective Time). Except as set forth in Section 3.17(c) of Appendix III, neither the execution and delivery of this Agreement or any Ancillary Agreement nor the consummation of the transactions contemplated hereby or thereby will result in the acceleration or vesting of any other rights of any Person to benefits under any Employee Plans.

3.18 Employee Benefit Plans

(a) Benefit Plans. The Company has delivered or made available to Parent copies of all documents that set forth the terms of each Employee Plan or Company benefit obligation. To the Company's knowledge, with respect to all Employee Plans, the Company is in compliance with ERISA, the Code and all other applicable laws. In addition, to the Company's knowledge, the Company has performed all of its material respective obligations under all Employee Plans and the Company has made appropriate entries in its financial statements for all material obligations and liabilities under such plans. Section 3.18(a) of Appendix III sets forth all Employee Plans of the Company.

(b) Deductibility of Payments. To the Company's knowledge, there is no contract, agreement, plan or arrangement covering any employee or former employee of the Company (with respect to such employee's relationship with the Company) that, individually or collectively, requires the payment by the Company of any amount (i) that is not deductible under Section 162(a)(1) or 404 of the Code or (ii) that is an "excess parachute payment" pursuant to Section 280G of the Code.

3.19 Transactions with Related Parties. Except for employment agreements and other compensation arrangements and agreements disclosed in the Schedule of Exceptions of Appendix III, no Related Party has (a) borrowed or loaned money or other property to the Company which has not been repaid or returned, (b) any contractual relationship with, or other claims, express or implied, of any kind whatsoever against the Company, except with respect to those as a stockholder of the Company, or (c) any interest in any property used by the Company, except with respect to those as a stockholder of the Company.

3.20 Compliance with Law. The Company has conducted the Business in compliance with all applicable Regulations and Court Orders, except as would not reasonably be expected to cause a Company Material Adverse Effect. The Company has not received any notice to the effect that, or has otherwise been advised that, the Company is not in compliance with any such Regulations or Court Orders, and the Company does not anticipate that any existing circumstances are reasonably likely to result in any material violation of any of the foregoing.

3.21 Intellectual Property.

(a) General. Section 3.21(a) of Appendix III sets forth with respect to Proprietary Rights of the Company: (i) for each trademark, trade name or service mark, for which a registration has been sought and for each material unregistered trademark, trade name, or service mark, the date first used, the application serial number or registration number, the class of goods covered, the nature of the goods or services, the countries in which the names or mark is used and the expiration date for each country in which a trademark has been registered, (ii) for each copyright for which registration has been sought, whether or not registered, the date of creation and first publication of the work and the number and date of registration for each country in which a copyright has been registered, (iii) for each patent which has been issued or invention for which a patent application has been filed, whether or not issued, the number and date of the application for each country in which a patent application has been made or a patent has been issued, (iv) for each mask work (if any), whether or not registered, the date of first commercial exploitation and if registered, the registration number and date of registration, (v) a summary description of all Trade Secrets that are material to the Business that are not covered by one of the foregoing, and where such description does not violate a confidentiality obligation to a third party and (vi) and (vii) all such Proprietary Rights in the form of licenses. True and correct copies of all Proprietary Rights (including all pending applications, application related documents and materials, and written materials relating to Trade Secrets that are material to the business) owned, controlled or used by or on behalf of the Company or in which the Company has any interest whatsoever have been provided to Parent.

(b) Adequacy. The Proprietary Rights of the Company are all those necessary for the normal conduct of the Business as presently conducted and as presently contemplated,

including the design, development and sale of all products or services currently under development, planned for development or in production, up to the current stage of development or production.

(c) Royalties and Licenses. Except as set forth in Section 3.21(c) of Appendix III, the Company has no obligation to compensate any Person for the use of any of the Proprietary Rights of the Company, the Company is not subject to any license of Proprietary Rights other than shrink-wrap licenses nor has the Company granted to any Person any license, option or other rights to use in any manner any of its Proprietary Rights, whether requiring the payment of royalties or not except for licenses granted in the ordinary course of business.

(d) Ownership. The Company has a valid right to use or owns free and clear of any Encumbrances the Proprietary Rights of the Company, and such Proprietary Rights will not cease to be valid rights of the Company by reason of the execution, delivery and performance of this Agreement or the Ancillary Agreements or the consummation of the transactions contemplated hereby or thereby.

(e) Absence of Claims. Except as set forth in Section 3.21(e) of Appendix III, the Company (A) has not received any notice alleging, or otherwise have knowledge of facts that might give rise to, invalidity with respect to any of the Proprietary Rights of the Company and (B) has not received any notice of alleged infringement of any rights of others due to any activity by the Company. To the best of the Company's knowledge, the Company's use of its Proprietary Rights in its past, current and planned products do not and would not infringe upon or otherwise violate the valid rights of any third party anywhere in the world. No other Person (i) has notified the Company that it is claiming any ownership of or right to use any of the Company's Proprietary Rights or (ii) to the best of the Company's knowledge, is infringing upon any such Proprietary Rights in any way.

(f) Protection of Proprietary Rights. All of the pending applications for the Company's Proprietary Rights have been duly filed and all other customary actions to protect such Proprietary Rights have been taken. The Company has taken reasonable steps necessary or appropriate (including, entering into appropriate confidentiality and nondisclosure agreements with officers, directors, subcontractors, Employees, licensees and customers in connection with the Assets or the Business) to safeguard and maintain the secrecy and confidentiality of, and the proprietary rights in, the Proprietary Rights that are material to the Business. To the best of its knowledge, the Company does not know of any breach of any such confidentiality or nondisclosure agreement by any party thereto.

3.22 Tax Matters.

(a) Filing of Tax Returns. The Company has timely filed with the appropriate taxing authorities all Tax Returns required to be filed through the date hereof. The Tax Returns filed are complete and accurate in all material respects. Except as set forth in Section 3.22 of Appendix III, the Company has not requested any extension of time within which to file any Tax Return. The Company has delivered to Parent complete and accurate copies of federal, state and local Tax Returns of the Company for the years ended December 31, 1999, 1998 and 1997.

(b) Payment of Taxes All Taxes due from the Company in respect of periods (or portions thereof) beginning before the Closing Date have been timely paid or an adequate reserve (in conformity with GAAP) has been established therefor, as set forth in the Financial Statements, and the Company has no Liability for Taxes in excess of the amounts so paid or reserves so established. Except as set forth in Section 3.22 of Appendix III, all Taxes that the Company is required by law to withhold or collect have been duly withheld or collected and have been timely paid over to the appropriate governmental authorities to the extent due and payable.

(c) Audits, Investigations or Claims. No deficiencies for Taxes of the Company have been claimed, proposed or assessed by any taxing or other governmental authority. Except as set forth in Section 3.22 of Appendix III, there are no pending or, to the best of the Company's knowledge, threatened audits, assessments or other Actions for or relating to any Liability in respect of Taxes of the Company, and there are no matters under discussion with any governmental authorities, or known to the Company, with respect to Taxes that will result in an additional Liability for Taxes. Audits of federal, state and local Tax Returns by the relevant taxing authorities have been completed for the periods set forth in Section 3.22 of Appendix III and, except as set forth in such Appendix, the Company has not been notified that any taxing authority intends to audit a Tax Return for any other period. Except as set forth in Section 3.22 of Appendix III, no extension of a statute of limitations relating to Taxes is in effect with respect to the Company or any predecessor.

(d) Lien. There are no Encumbrances for Taxes on any of the Assets or any shares of Company Stock, except for Taxes which are not yet due.

(e) Tax Elections The Company has not (i) consented at any time under Section 341(f)(1) of the Code to have the provisions of Section 341(f)(2) of the Code apply to any disposition of any Assets; (ii) agreed, or is required, to make any adjustment under Section 481(a) of the Code by reason of a change in accounting method or otherwise; (iii) made an election, or is required, to treat any Asset as owned by another Person pursuant to the provisions of Section 168(f) of the Code or as tax-exempt bond financed property or tax-exempt use property within the meaning of Section 168 of the Code; (iv) acquired and does not own any assets that directly or indirectly secure any debt the interest on which is tax exempt under Section 103(a) of the Code; or (v) made any of the foregoing elections or is not required to apply any of the foregoing rules under any comparable state or local Tax provision.

(f) Tax Sharing Agreements. There are no Tax-sharing agreements or similar arrangements (including indemnity arrangements) with respect to or involving the Company, the Assets or the Business and, after the Closing Date, none of the Company, the Assets or the Business shall be bound by any such Tax-sharing agreements or similar arrangements or have any Liability thereunder for amounts due in respect of periods prior to the Closing Date.

(g) Partnerships. The Company has no interest in nor is it subject to any joint venture, partnership or other arrangement or contract which is treated as a partnership for federal income tax purposes.

(h) Other Entity Liability. The Company does not have any Liability for the Taxes of any Person (other than Taxes of the Company (without regard to the activities of any

predecessor)) under Treasury Regulation Section 1.1502-6 (or any similar provision of state, local, or foreign law), as a transferee or successor, by contract or otherwise.

(i) Correspondence. Section 3.22(i) of Appendix III includes all correspondence to or from the Company or Affiliates (or their respective Representatives) on the one hand and the Internal Revenue Service ("IRS") or any state Tax authority on the other hand.

3.23 Insurance. Section 3.23 of Appendix III contains a complete and accurate list of all policies or binders of insurance (showing as to each policy or binder the carrier, policy number, coverage limits, expiration dates, annual premiums, a general description of the type of coverage provided and any pending claims thereunder) of which the Company is the owner, insured or beneficiary. The Company has in full force and effect fire and casualty insurance policies, with extended coverage, and insurance against other hazards, risks and liabilities to persons and property to the extent and in the manner customary for similarly situated companies in a similar business. The Company is not in default under any of such policies or binders, and has not failed to give any notice or to present any material claim under any such policy or binder in a due and timely fashion. There are no facts known to the Company upon which an insurer might be justified in reducing or denying coverage or increasing premiums on existing policies or binders. There are no outstanding unpaid claims under any such policies or binders. Such policies and binders are in full force and effect on the date hereof and shall be kept in full force and effect by the Company through the Closing Date.

3.24 Suppliers. Section 3.24 of Appendix III sets forth a complete and accurate list of the names and addresses of all suppliers with a volume of sales to the Company in excess of \$50,000 during the current fiscal year, showing the approximate total purchases in dollars by the Company from each such supplier during such fiscal year. Since the Balance Sheet Date, there has been no Company Material Adverse Change in the business relationship of the Company with any supplier named in Section 3.24 of Appendix III. The Company has not received any written communication from any supplier named in Section 3.24 of Appendix III of any intention to return, terminate or materially reduce purchases from or supplies to the Company.

3.25 Brokers; Transaction Costs. Except as set forth in Section 3.25 of Appendix III, the Company has not entered into or will not enter into any contract, agreement, arrangement or understanding with any Person which will result in the obligation of Parent or the Company to pay any finder's fee, brokerage commission, legal, accounting, or similar payment in connection with the transactions contemplated hereby. The Company has paid any amounts it owes to Donaldson, Lufkin & Jenrette.

3.26 No Other Agreements to Sell the Company or the Assets. The Company does not have any legal obligation, absolute or contingent, to any other Person to sell the Assets or to sell any capital stock of the Company or to effect any merger, consolidation or other reorganization of the Company or to enter into any agreement with respect thereto, except pursuant to this Agreement or except as may have been waived in writing by Parent.

3.27 Approvals. Section 3.27 of Appendix III contains a list of all material approvals or consents relating to the business conducted by the Company which are required to be given to

or obtained by the Company from any Person in connection with the consummation of the transactions contemplated by this Agreement.

3.28 Takeover Statutes. No Takeover Statute applicable to the Company is applicable to the Merger or the transactions contemplated hereby.

3.29 Material Misstatements Or Omissions. To the best of the Company's knowledge, no representations or warranties by the Company in this Agreement or any Ancillary Agreement to which it is a party or in any document, written information, exhibit, statement, certificate or schedule heretofore or hereinafter furnished by the Company or any of its Representatives to Parent or Sub pursuant hereto, or in connection with the transactions contemplated by this Agreement or by such Ancillary Agreements contains or will contain any untrue statement of a material fact, or omits or will omit to state any material fact necessary to make the statements or facts contained therein not misleading.

3.30 Stockholder Approval. The affirmative vote of a majority of each class of Company Common Stock, Series A Preferred Stock and Company Preferred Stock is the only vote of the holders of any class or series of capital stock of the Company or any Subsidiary necessary to approve this Agreement and the transactions contemplated hereby.

ARTICLE 4.

MATTERS RELATING TO THE MERGER SHARES

Holders of the Merger Shares shall have the following rights, and be subject to the following limitations set forth in this Article 4.

4.1 Put Option. The holders of the Merger Shares (herein referred to "**Holders**" or individually as "**Holder**") shall be entitled, subject to the terms and conditions set forth below, to sell to Parent and Parent shall be obligated to purchase from any or all of the holders of the Merger Shares, the Merger Shares (the "**Put Option**") for the per share purchase price provided for in Section 4.1(b).

(a) Term. The Put Option shall be exercisable severally by the Holders for all of the Merger Shares held by each Holder, during the term commencing on the second anniversary of the Effective Date and ending on the thirtieth calendar day thereafter (the "**Exercise Period**").

(b) Purchase Price. The Purchase Price for each Merger Share will be determined by dividing \$5,000,000 by the number of Merger Shares issued pursuant to section 2.6(a) (as the same may be adjusted for any subdivision, combination or stock dividend of the Parent Common Stock).

(c) Exercise of Put Option. The Put Option may be exercised by delivery of the Notice of Exercise attached hereto as Exhibit B duly completed and executed on behalf of the Holder, at the office of Parent (or such other office or agency of the Parent as it may designate by notice in writing to the Holder at the address of such Holder appearing on the books of Parent) during the Exercise Period. As promptly as practicable on or after the date the Notice of

Exercise is received by Parent and in any event within five (5) business days thereafter, the Holder will deliver the stock certificates representing the Merger Shares in exchange for delivery by the Parent of the Purchase Price, for the account of the Holder, by wire transfer of immediately available funds to a bank account specified by the Holder, or by certified or bank cashier's check. The Put Option shall be deemed to have been exercised immediately prior to the close of business on the Exercise Date as provided above, provided, however that if the purchase of Parent Company Stock at such time would violate any Regulation, the Parent shall use its reasonable efforts promptly to take such actions as are required so that the purchase does not violate such Regulation, and the Holder shall no longer be treated for all purposes as the holder of record of the Merger Shares and will no longer have rights as a holder of Parent Common Stock as of the close of business on such date.

(d) Nontransferability of Put Option. This Put Option may not be transferred or assigned in whole or in part; provided, however, that any Holder may transfer the Put Option or its interest therein to any affiliate, partner, retired partner, member or retired member of such Holder.

4.2 Right of First Refusal. If a Holder proposes to sell, pledge or otherwise transfer to a third party any Parent Common Stock acquired under this Agreement, or any interest in such Parent Common Stock, Parent shall have the "Right of First Refusal" with respect to all (and not less than all) of such Parent Common Stock. If Holder desires to transfer Parent Common Stock acquired under this Agreement, Holder must give a written "Transfer Notice" to Parent describing fully the proposed transfer, including the number of shares proposed to be transferred, the proposed transfer price and the name and address of the proposed transferee. The Transfer Notice shall be signed both by Holder and by the proposed transferee and must constitute a binding commitment of both parties to the transfer of the Parent Common Stock. Parent shall have the right to purchase all, and not less than all, of the Parent Common Stock on the terms of the proposal described in the Transfer Notice (subject, however, to any change in such terms permitted in the next paragraph) by delivery of a notice of exercise of the Right of First Refusal within thirty (30) days after the date when the Transfer Notice was received by Parent. Notwithstanding the foregoing, any Holder may transfer the Parent Common Stock it acquires under this Agreement to any affiliate, partner, retired partner, member or retired member of such Holder without being subject to Parent's Right of First Refusal if the transferee to whom such Holder proposes to transfer its Parent Common Stock agrees in writing to be bound by the Right of First Refusal set forth in this Section 4.2.

If Parent fails to exercise its Right of First Refusal before or within thirty (30) days after the date when it received the Transfer Notice, Holder may, not later than ninety (90) days following receipt of the Transfer Notice by Parent, conclude a transfer of the Parent Common Stock subject to the Transfer Notice on the terms and conditions described in the Transfer Notice. Any proposed transfer on terms and conditions different from those described in the Transfer Notice, as well as any subsequent proposed transfer by Holder, shall again be subject to the Right of First Refusal and shall require compliance with the procedure described in the paragraph above. If the Parent exercises its Right of First Refusal, the parties shall consummate the sale of the Parent Common Stock on the terms set forth in the Transfer Notice within sixty (60) days after the date when Parent received the Transfer Notice (or within such longer period as may have been specified in the Transfer Notice); provided, however, that if the Transfer

Notice provided that payment for the Parent Common Stock was to be made in a form other than lawful money paid at the time of transfer, Parent shall have the option of paying for the Parent Common Stock with lawful money equal to the fair market value of the consideration described in the Transfer Notice.

Parent's Right of First Refusal shall inure to the benefit of its successors and assigns, shall be freely assignable in whole or in part and shall be binding upon any transferee of the Parent Common Stock.

4.3 Registration Rights. If and only if Parent grants registration rights to the holders of any securities of Parent, then, at such time, Parent shall grant piggyback registration rights to the holders of the Merger Shares, on similar terms and conditions as granted by Parent to other holders of its securities. Such piggyback registration rights shall be subject to customary lock ups, cut backs, exclusions and other terms and conditions as may be imposed on holders of registration rights by the Company.

4.4 Legends. The certificates evidencing the Merger Shares will bear the following legends reflecting the foregoing restrictions on the transfer of such securities:

"THE SECURITIES EVIDENCED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), AND MAY NOT BE TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION UNDER THE ACT OR IN A TRANSACTION WHICH, IN THE OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE COMPANY, QUALIFIES AS AN EXEMPT TRANSACTION UNDER THE ACT AND THE RULES AND REGULATIONS PROMULGATED THEREUNDER."

"THE SECURITIES EVIDENCED HEREBY ARE HELD SUBJECT TO THE TERMS AND CONDITIONS OF AN AGREEMENT AND PLAN OF MERGER DATED DECEMBER 29, 2000 BY AND BETWEEN THE COMPANY AND THE HOLDER OF THE SHARES EVIDENCED BY THIS CERTIFICATE WHICH AGREEMENT CONTAINS PROVISIONS RESTRICTING TRANSFER OF THE SECURITIES EVIDENCED HEREBY. A COPY OF THE AGREEMENT AND PLAN OF MERGER HAS BEEN FILED WITH THE SECRETARY OF THE COMPANY AND IS AVAILABLE UPON REQUEST."

ARTICLE 5.

REPRESENTATIONS AND WARRANTIES OF PARENT AND SUB

As an inducement of the Company to enter into this Agreement, Parent and Sub, as applicable, hereby make, as of the date hereof and, except as otherwise noted, as of the Closing Date, the following representations and warranties to the Company, except as otherwise set forth in written disclosure schedule (the "*Parent Schedule of Exceptions*") delivered to the Company prior to the date hereof, a copy of which is attached hereto as **Appendix IV**. The Parent Schedule of Exceptions shall have sections that are numbered to correspond to the various sections of this Article 5 setting forth certain exceptions to the representations and warranties contained in this Article 5 and certain other information called for by this Agreement. Unless otherwise specified, no disclosure made in any particular section of the Parent Schedule of Exceptions shall be deemed made in any other section of the Parent Schedule of Exceptions unless expressly made therein (by cross-reference or otherwise) or the Parent Schedule of Exceptions otherwise contains express disclosure which from a reading of such disclosure it is clear the exception applies to another section.

5.1 Organization. Parent is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Parent has full corporate power and authority to conduct its Business as it is presently being conducted and to own or lease, as applicable, the Assets owned and leased by it. Parent is duly qualified to do business as a foreign corporation and is in good standing in each jurisdiction in which such qualification is necessary under applicable law as a result of the conduct of its Business or the ownership of its properties—where the failure to be so qualified would have a Material Adverse Effect on Parent. Sub is a corporation duly organized, validly existing and in good standing under the laws of the state of Delaware. Sub has not engaged in any business (other than in connection with this Agreement and the transactions contemplated hereby) since the date of its incorporation.

5.2 Capitalization.

(a) Authorized Capitalization. As of the date of this Agreement, Parent has authorized under its Certificate of Incorporation (i) 1,000,000 shares of Parent Common Stock of which no shares are issued and outstanding and (ii) 750,000 shares of Parent Preferred Stock, of which 730,017 are issued and outstanding. As of the date of this Agreement, Parent has no other stock authorized, issued or outstanding.

(b) Options. There are (i) 97,335 shares of Parent Common Stock reserved for issuance upon the exercise of options granted or available for grant under Parent's 2000 Stock Incentive Plan (the "Parent Options").

(c) No Other Capital Stock, Options, Warrants. Except for the Parent Options and Parent Preferred Stock, there are no outstanding options, warrants, convertible securities or rights of any kind to purchase or otherwise acquire any shares of capital stock or other securities of Parent. Except as set forth in Appendix IV and in Sections 5.2(a) and 5.2(b), no shares of capital stock of Parent are reserved for issuance.

(d) Valid Issuances. All outstanding shares of Parent Common Stock issued or to be issued upon exercise of any of the Parent Options and Parent Preferred Stock before the Effective Date will be validly issued, fully paid and non-assessable and not subject to any preemptive rights created by statute, Parent's Certificate of Incorporation or Bylaws or any Contract. The Parent Options have been, and the shares of Parent Capital Stock issued before the Effective Time have been or will be, issued in compliance with all federal and state corporate and securities laws.

(e) Other Transactions. Other than the transactions contemplated by this Agreement, there is no outstanding vote, plan or pending proposal any merger or consolidation of Parent with or into any other entity.

(f) Merger Shares. The Merger Shares to be issued pursuant to the terms of this Agreement have been duly authorized and, when issued in accordance with the terms hereof, will be validly issued, fully paid and nonassessable.

(g) Sub Capitalization. The authorized capital stock of Sub consists of 1,000 shares of common stock, par value \$0.001 per share, of which 100 shares are issued and outstanding. All of such outstanding shares are owned by Parent and are validly issued, fully paid and non-assessable.

5.3 Stockholders' Agreements, etc. Other than the Parent Options, there are no stockholder agreements, voting trusts, proxies or other agreements or understandings with respect to or concerning the purchase, sale or voting of the capital stock of Parent.

5.4 Authorization. Each of Parent and Sub has all necessary corporate power and authority to enter into this Agreement and the Ancillary Agreements to which it is a party and has taken all action necessary to consummate the transactions contemplated hereby and thereby and to perform its respective obligations hereunder and thereunder. This Agreement has been duly executed and delivered by each of Parent and Sub, and this Agreement is, and upon execution and delivery each of the Ancillary Agreements to which each of Parent and Sub is a party will be, a valid and binding obligation of each of Parent and Sub enforceable against each of Parent and Sub in accordance with its terms, except that enforceability may be limited by the effect of (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the rights of creditors or (b) general principles of equity (regardless of whether enforceability is considered in a proceeding at law or in equity).

5.5 Officers and Directors. Section 5.5 of Appendix IV contains a true, correct and complete list of all the officers and directors of Parent and Sub.

5.6 Subsidiaries, Etc. Other than Sub, Parent does not own or hold any controlling equity interest of any kind in any other Person.

5.7 No Conflict or Violation; Consents. Except as set forth in Section 5.7 of Appendix IV and except as would not result in a Material Adverse Effect on Parent, none of the execution, delivery or performance of this Agreement or any Ancillary Agreement, the consummation of the transactions contemplated hereby or thereby, nor compliance by Parent or Sub with any of the provisions hereof or thereof, will (a) violate or conflict with any provision of

Parent's or Sub's governing documents, (b) violate, conflict with, or result in a breach of or constitute a default (with or without notice of passage of time) under, or result in the termination of, or accelerate the performance required by, or result in a right to terminate, accelerate, modify or cancel under, or require a notice under, or result in the creation of any Encumbrance upon any of its Assets under, any Contract, sublease, sublicense, franchise, permit, indenture, agreement or mortgage for borrowed money, instrument of indebtedness, security interest or other arrangement to which Parent or Sub is a party or by which Parent or Sub is bound or to which any of their respective Assets are subject, (c) violate any Regulation or Court Order applicable to Parent or Sub or (d) impose any Encumbrance on any Assets or the Business of Parent or Sub. Except as set forth in Section 5.7 of **Appendix IV** no notices to, declaration, filing or registration with, approvals or Consents of, or assignments by, any Persons (including any federal, state or local governmental or administrative authorities) are necessary to be made or obtained by Parent or Sub in connection with the execution, delivery or performance of this Agreement or any Ancillary Agreement or the consummation of the transactions contemplated hereby or thereby.

5.8 Financial Statements; Books and Records.

(a) Generally. The financial statements of Parent that have been delivered to the Company, including the notes thereto, are complete and accurately represent the Parent's Business and financial condition, and fairly present in all material respects the consolidated financial condition of Parent as at the dates thereof and consolidated results of operations and cash flows for the periods then ended.

(b) Internal Controls. Parent maintains a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed with management's authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements for its shareholders and to maintain accountability for its Assets, (iii) access to its Assets is permitted only in accordance with management's authorization and (iv) the recorded accountability for its Assets is compared with existing Assets at reasonable intervals and appropriate action is taken with respect to any differences.

(c) Books and Records. The Books and Records, in reasonable detail, accurately and fairly reflect in all material respects the activities of Parent and its Business.

(d) All Accounts Recorded. Parent has not engaged in any transaction, maintained any bank account or used any corporate funds except for transactions, bank accounts or funds which have been and are reflected in the normally maintained Books and Records.

(e) Corporate Records. The stock records and minute books of Parent that have been delivered to the Company fully reflect all minutes of meetings, resolutions and other material actions and proceedings of its stockholders and board of directors and all committees thereof, all issuances, transfers and redemptions of capital stock of which Parent is aware and contain true, correct and complete copies of their respective Certificate of Incorporation and Bylaws and all amendments thereto through the date hereof.

5.9 Litigation. Except as set forth in Section 5.9 of **Appendix IV**, there is no Action, pending or, to the knowledge of Parent, threatened or anticipated (i) against, relating to

affecting Parent, any of Parent's material Assets or Parent's officers and directors as such, (ii) which seeks to enjoin or obtain damages in respect of the transactions contemplated hereby or by the Ancillary Agreements or (iii) with respect to which there is a reasonable likelihood of a determination which would prevent Parent from consummating the transactions contemplated hereby. None of the Actions, if adversely determined against Parent, its directors or officers, or any other Person could reasonably be expected to result in a loss to Parent, individually or in the aggregate, in excess of \$250,000. To the knowledge of Parent, there is no basis for any Action, which if adversely determined against Parent, its directors or officers, or any other Person could reasonably be expected to result in a loss to Parent, individually or in the aggregate, in excess of \$250,000. There are presently no outstanding judgments, decrees or orders of any court or any governmental or administrative agency against or affecting Parent, its Business or any of its material Assets. Section 5.9 of Appendix IV contains a complete and accurate description of all Actions since date of inception to which Parent has been a party or, to Parent's knowledge, which otherwise relate to any of its material Assets or Parent's officers or directors as such, or any such Actions which were settled prior to the institution of formal proceedings, other than Actions brought by Parent for collection of monies owed in the ordinary course of business.

5.10 Compliance with Law. Parent has conducted its business in compliance with all applicable Regulations and Court Orders, except as would not reasonably be expected to cause a Parent Material Adverse Effect. Parent has not received any notice to the effect that, or has otherwise been advised that, Parent is not in compliance with any such Regulations or Court Orders, and Parent does not anticipate that any existing circumstances are reasonably likely to result in any material violation of any of the foregoing.

5.11 Material Misstatements or Omissions. To the knowledge of Parent, no representations or warranties by Parent or Sub in this Agreement or any Ancillary Agreement to which it is a party or in any document, written information, exhibit, statement, certificate or schedule heretofore or hereinafter furnished by Parent or Sub or any of its Representatives to the Company pursuant hereto, or in connection with the transactions contemplated by this Agreement or by such Ancillary Agreements contains or will contain any untrue statement of a material fact, or omits or will omit to state any material fact necessary to make the statements or facts contained therein not misleading.

ARTICLE 6.

ACTIONS BY THE COMPANY AND PARENT PRIOR TO THE CLOSING

The Company, Parent and Sub, each as indicated below, covenant as follows for the period from the date hereof through the Closing Date:

6.1 Conduct of Business. From the date hereof through the Closing Date, (x) the Company shall, except as consented to by Parent in writing, operate the Business solely in the ordinary course of business and in accordance with past practice and (y) Parent shall, except as consented to by the Company in writing, operate the businesses solely in the ordinary course of business and in accordance with past practice. The parties hereto will not, in any event, take any action inconsistent with this Agreement, the Ancillary Agreements or the consummation of the Closing.

Without limiting the generality of the foregoing, the Company shall not except as specifically contemplated by this Agreement or as consented to by Parent in writing, su consent not to be unreasonably withheld:

(a) incur any indebtedness for borrowed money, or assume, guarantee, endorse (other than endorsements for deposit or collection in the ordinary course of business), or otherwise become responsible for obligations of any other Person in excess of \$25,000;

(b) issue (except pursuant to Company Options outstanding on the date of this Agreement and except as disclosed in Sections 3.2(b) and 3.2(c) of Appendix III) or commit to issue any shares of its capital stock or any other securities or any securities convertible into shares of its capital stock or any other securities, including any options to acquire capital stock;

(c) declare, pay or incur any obligation to pay any dividend on its capital stock or declare, make or incur any obligation to make any distribution or redemption with respect to capital stock;

(d) make any change to the Company's Certificate of Incorporation or Bylaws;

(e) mortgage, pledge or otherwise encumber any Assets or sell, transfer, license or otherwise dispose of any Assets except in the ordinary course of business and consistent with past practice;

(f) cancel, release or assign any indebtedness owed to it or any claims rights held by it in excess of \$25,000;

(g) make any investment or commitment of a capital nature either by purchase of stock or securities, contributions to capital, property transfer or otherwise, or by the purchase of any property or assets of any other Person in excess of \$25,000;

(h) enter into or terminate any material Contract or agree to make any material adverse change in any material Contract;

(i) enter into or modify any Contract or other arrangement with a Related Party;

(j) (i) enter into or modify any employment Contract, (ii) pay any compensation to or for any employee, officer or director other than in the ordinary course of business and pursuant to existing employment arrangements, (iii) pay or agree to pay any bonus, incentive compensation, service award, severance, "stay bonus" or other like benefit other than pursuant to existing arrangements, (iv) enter into or modify any other Employee Plan, (v) modify the Company Stock Option Plan, or (vi) make any cash distributions;

(k) make any change in any method of accounting or accounting practice;

(l) fail to comply with all Regulations applicable to the Assets (except as would not reasonably be expected to result in a Company Material Adverse Effect) and the Business;

(m) fail to use its commercially reasonable efforts to (i) maintain the Business; (ii) retain the Employees so that such Employees will remain available to the Surviving Corporation on and after the Closing Date, (iii) maintain existing relationships with material suppliers and customers and others having business dealings with Parent and (iv) otherwise to preserve the goodwill of the Business so that such relationships and goodwill will be preserved on and after the Closing Date;

(n) make or change any election in respect of Taxes, adopt or change any material accounting method in respect of Taxes, enter into any tax allocation agreement, tax sharing agreement, tax indemnity agreement or closing agreement, settle or compromise any claim, notice, audit report or assessment in respect of Taxes, or consent to any extension or waiver of the limitation period applicable to any claim or assessment in respect of Taxes;

(o) commence any Action or other legal proceeding without the prior written consent of the Parent;

(p) do any other act which would cause any representation or warranty of the Company in this Agreement to be or become untrue in any material respect or that is not in the ordinary course of business consistent with past practice; or

(q) directly or indirectly take, agree to take or otherwise permit to occur any of the actions described in Sections 6.1(a) through 6.1(p).

6.2 Access. From the date hereof through the Closing Date:

(a) the Company shall, and shall cause the Company's officers, Employees and Representatives to, afford the Representatives of the Parent access upon reasonable notice and at all reasonable times to its Business for the purpose of inspecting the same, and to its Employees and Representatives, properties, Books and Records, Contracts and other Assets, and shall furnish Parent and its Representatives upon reasonable notice and in a timely manner, all financial, operating and other data and information as Parent or its affiliates, through their respective Representatives, may reasonably request; and

(b) Parent shall, and shall cause Parent's officers, employees and Representatives to, afford the Representatives of the Company access upon reasonable notice and at all reasonable times to its Business for the purpose of inspecting the same, and to its employees and representatives, properties, Books and Records, Contracts and other Assets, and shall furnish the Company and its Representatives, upon reasonable notice and in a timely manner, all financial, operating and other data and information as the Company, through its Representatives, may reasonably request.

6.3 Notification of Certain Matters

(a) The Company shall give prompt notice to Parent of (i) the occurrence, or failure to occur, of any event which occurrence or failure would be likely to cause any representation or warranty of the Company contained in this Agreement to be untrue or inaccurate in any material respect and (ii) any material failure of the Company to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder; *provided, however*, that such disclosure shall not be deemed to cure any breach of a representation, warranty, covenant or agreement or to satisfy any condition. The Company shall promptly notify Parent of any Default, the threat or commencement of any Action, or any development that occurs before the Closing that could reasonably be expected to result in a Company Material Adverse Effect.

(b) Parent shall give prompt notice to the Company of (i) the occurrence, or failure to occur, of any event which occurrence or failure would be likely to cause any representation or warranty of Parent contained in this Agreement to be untrue or inaccurate in any material respect and (ii) any material failure of Parent to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder; *provided, however*, that such disclosure shall not be deemed to cure any breach of a representation, warranty, covenant or agreement or to satisfy any condition. Parent shall promptly notify the Company of any Default, the threat or commencement of any Action, or any development that occurs before the Closing that could reasonably be expected to result in a Parent Material Adverse Effect.

6.4 No Mergers, Consolidations, Sale of Stock, etc. The Company will not, directly or indirectly, through any Representative or otherwise, (a) solicit any inquiries or proposals or continue or, except as may be required under applicable law concerning a director's fiduciary duty, enter into any discussions, negotiations or agreements relating to (i) the sale or exchange of the Company's capital stock, (ii) the merger of the Company with, or the direct or indirect disposition of a significant amount of the Assets or the Business to, any Person other than Parent or (iii) the licensing of the Company's Proprietary Rights to any Person other than in the ordinary course of business consistent with past practice or (b) except as may be required under applicable law concerning a director's fiduciary duty, provide any assistance or any information to or otherwise cooperate with any Person in connection with any such discussions, negotiations or agreements. The Company hereby represents that it is not now engaged in discussions or negotiations with any party other than Parent with respect to any transaction of the kind described in clauses (a) (i) through (a) (iii) of the preceding sentence (a "Proposed Acquisition Transaction"). The Company agrees not to release any third party from, or waive any provision of, any confidentiality or standstill agreement to which any of them is a party. The Company, as the case may be, shall (w) immediately notify Parent (orally and in writing) if any offer is made or any discussions or negotiations are sought to be initiated, any inquiry, proposal or contact is made or any information is requested with respect to any Proposed Acquisition Transaction, (x) promptly notify Parent of the terms of any proposal which it may receive in respect of any such Proposed Acquisition Transaction, including the identity of the prospective purchaser or soliciting party, (y) promptly provide Parent with a copy of any such offer, if written, or a written summary (in reasonable detail) of such offer, if not in writing, and (z) keep Parent informed the status of such offer and the offeror's efforts and activities with respect thereto.

6.5 Company Stockholder Approval

(a) The Company agrees that it will promptly submit to the Stockholders a written consent in lieu of a meeting of such Stockholders (the "Stockholder Consent"), (i) approving the execution, deliver and performance by the Company of this Agreement and each of the Ancillary Agreements to which it is a party, and the consummation of the transactions contemplated hereby and thereby, (ii) expressly waiving any dissenters' appraisal or similar remedy available under the DGCL or other applicable law, (iii) attaching a copy of such other documents as the Company deems are necessary to comply with applicable law or are otherwise reasonable appropriate. The Company shall use all reasonable efforts to ensure that the required stockholder vote will be obtained as promptly as practicable after the Stockholder Consent is first sent to the Stockholders. The Company shall ensure that the required stockholder vote is obtained in compliance with all applicable Regulations.

(b) The board of directors of the Company shall recommend by the requisite vote required by the bylaws and certificate of incorporation of the Company that the Stockholders adopt and approve this Agreement and approve the Merger. Except as may be required under applicable law concerning a director's fiduciary duty neither the board of directors of the Company nor any committee thereof shall withdraw, amend or modify, or propose or resolve to withdraw, amend or modify, in a manner adverse to Parent, the recommendation of the board of directors of the Company that the Stockholders adopt and approve this Agreement and approve the Merger.

6.6 Closing Date. Each party to this Agreement shall use all commercially reasonable efforts to cause the Closing to occur on or before December 29, 2000.

6.7 Takeover Statutes. If any Takeover Statute is or may become applicable to the transactions contemplated hereby, the Board of Directors of the Company will grant such approvals and take such actions as are necessary so that the transactions contemplated hereby may be consummated as promptly as practicable on the terms contemplated hereby and otherwise act to eliminate the effects of any Takeover Statute on any of the transactions contemplated hereby.

6.8 Further Assurances. Upon the terms and subject to the conditions contained herein, the parties agree, in each case both before and after the Closing, (i) to use all commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable to consummate and make effective the transactions contemplated by this Agreement and the Ancillary Agreements, (ii) to use their respective commercially reasonable efforts to cause the Merger to qualify, and will not take any actions which to their knowledge could reasonably be expected to prevent the Merger from qualifying as a reorganization under the provisions of Section 368(a) of the Code, (iii) to execute any documents, instruments or conveyances of any kind which may be reasonably necessary or advisable to carry out any of the transactions contemplated hereunder and under the Ancillary Agreements and (iv) to cooperate with each other in connection with the foregoing. Without limiting the foregoing, the parties agree to use their respective reasonable commercial efforts (A) to obtain any necessary Consents (B) to give all notices to, and make all registrations and

filings with third parties, including submissions of information requested by government authorities and (C) to fulfill all other conditions to this Agreement.

ARTICLE 7.

CONDITIONS TO THE COMPANY'S OBLIGATIONS

The obligation of the Company to effect the Merger and complete the related transactions contemplated by this Agreement are subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions:

7.1 Representations, Warranties and Covenants.

(a) All representations and warranties (considered collectively) and each representation and warranty (considered individually) of Parent and Sub contained in this Agreement shall be true and correct in all material respects at and as of the Closing Date as if such representations and warranties were made at and as of the Closing Date, and Parent and Sub shall have performed in all material respects all agreements and covenants required hereby to be performed by it prior to or at the Closing Date.

(b) Each document required to be delivered pursuant to Section 9.2 must have been delivered, and each of the other covenants and obligations in Sections 6.3, 6.4, and 6.5, must have been performed and complied with in all material respects.

(c) There shall be delivered to the Company and Stockholders a certificate of Parent signed by its Chief Executive Officer as to compliance with 7.1(a) and 7.1(b) ("*Parent Closing Certificate*").

7.2 Consents. All Consents, approvals and waivers from governmental authorities necessary to permit consummation of the Merger as contemplated hereby and by the Ancillary Agreements shall have been obtained and all approvals required under any Regulations to permit Parent and Sub to carry out the transactions contemplated by this Agreement and the Ancillary Agreements and for the operation of the Business after the Closing (including all third party consents required under the Contracts where failure to obtain the consent would have a Company Material Adverse Effect) shall have been obtained and shall be in full force and effect.

7.3 No Court Orders. No Action by any court, governmental authority or other Person shall have been instituted or threatened which questions the validity or legality of the transactions contemplated hereby and by the Ancillary Agreements. There shall not be any Regulation or Court Order that makes the acquisition of the Company Stock contemplated hereby illegal or otherwise prohibited or that otherwise is reasonably likely to have a Company Material Adverse Effect.

7.4 Closing Documents. Parent shall have delivered to the Stockholders the documents and other items described in Section 9.2 and such other documents and items as the Company or the Stockholders may reasonably request.

7.5 Board Approval. This Agreement and the Merger shall have been approved by the requisite vote of the Board of Directors of Parent (or a committee thereof) and the Sub as specified in the bylaws of the Parent and the Sub, respectively.

7.6 Opinion of Counsel. The Company shall receive from Pillsbury Madison & Sutro LLP ("Pillsbury") counsel to Parent and Sub, dated as of the Closing and in customary form, the opinions set forth on Schedule 7.6.

ARTICLE 8

CONDITIONS TO PARENT'S AND SUB'S OBLIGATIONS

The obligations of Parent and Sub to effect the Merger and complete the related transactions contemplated by this Agreement are subject, in the discretion of Parent, to the satisfaction, on or prior to the Closing Date, of each of the following conditions

8.1 Representations, Warranties and Covenants

(a) All representations and warranties of the Company contained in this Agreement shall be true and correct in all material respects at and as of the Closing Date as if such representations and warranties were made at and as of the Closing Date, and the Company shall have performed in all material respects all agreements and covenants required hereby to be performed prior to or at the Closing Date.

(b) Each document required to be delivered pursuant to Section 9.1 must have been delivered, and each of the other covenants and obligations in Sections 6.3, 6.4, and 6.5 must have been performed and complied with in all respects.

(c) There shall be delivered to Parent a certificate of the Company signed by its Chief Executive Officer and its President (the "Company Closing Certificate") to the Company as to compliance with 8.1(a) and 8.1(b).

8.2 Consents. All Consents, approvals and waivers from governmental authorities necessary to permit consummation of the Merger as contemplated hereby and by the Ancillary Agreements shall have been obtained and shall be in full force and effect and all approvals required under any Regulations to permit Parent and Sub to carry out the transactions contemplated by this Agreement and the Ancillary Agreements and for the operation of the Business after the Closing (including all third party consents required under the Contracts including Contracts relating to the Proprietary Rights where failure to obtain the consent would have a Parent Material Adverse Effect) shall have been obtained and shall be in full force and effect.

8.3 No Actions or Court Orders. No Action by any court, governmental authority or other Person shall have been instituted or threatened which questions the validity or legality of the transactions contemplated hereby and by the Ancillary Agreements. There shall not be any Regulation or Court Order that makes the acquisition of the Company Stock contemplated hereby illegal or otherwise prohibited.

8.4 Closing Documents. The Company shall have delivered to Parent the documents and other items described in Section 9.1 and such other documents and items as Parent reasonably request.

8.5 Exemption under Federal and State Securities Laws. All permits, licenses, consents and approvals necessary under any laws relating to the issuance of shares of Parent Common Stock in the Merger shall have been issued or given and no such permit, license, consent or approval shall have been revoked, concluded, terminated, suspended or made subject of any stop orders or proceeding therefor.

8.6 Stockholder Consent. The requisite vote of 90% of Company Stock, as well as the requisite vote of each class or series of Company Stock as specified in the bylaws or the Certificate of Incorporation of the Company, shall have executed the Stockholder Consent and the Company shall have taken all further actions related to the due authorization of the Merger as may be required under the DGCL including the valid waiver of any right to assert dissenters' or similar rights under the DGCL or other applicable law.

8.7 Board Consent. This Agreement and the Merger shall have been approved by the requisite vote of the Board of Directors of the Company as specified in the bylaws of the Company.

8.8 Opinion of Counsel. Parent shall receive from Gunderson Detmer Stough Villeneuve Franklin & Hachigian LLP ("*Gunderson*") counsel to the Company, dated as of the Closing and in customary form, the opinions set forth on Schedule 8.8.

8.9 Options and Warrants. On or before the Effective Time of the Merger, all Company Options and Company Warrants shall have been terminated and Parent shall have received evidence of such termination.

8.10 Closing Balance Sheet. The Company shall have delivered to Parent a balance sheet of the Company at November 30, 2000 (the "*November 30 Balance Sheet*").

8.11 News America Letter. The Company shall have delivered to Parent a letter, executed by News America In-Store Marketing, Inc., substantially in the form attached hereto as Exhibit C.

8.12 Stockholder Agreements. The Investors Rights Agreement and the Co-Sale Agreement shall have been terminated and Parent shall receive evidence of such termination.

ARTICLE 9.

CLOSING

On the Closing Date at the Closing Place:

9.1 Deliveries by the Company to Parent. The Company shall deliver (or cause to be delivered) to Parent:

- (a) the Ancillary Agreements, duly executed by each party thereto other than Parent and Sub;
- (b) any Consents required to be obtained by the Company or the Stockholders;
- (c) the Company Closing Certificate;
- (d) the opinion of Gunderson, dated as of the Closing Date, as provided for in Section 8.9;
- (e) the Stockholder Consent, duly executed by the requisite vote of each class or series of Company Stock; and
- (f) a copy of the text of the resolutions by which the board of directors of the Company approved the Merger and this Agreement and a certificate by its corporate secretary certifying to the Parent and Sub that such copy is a true, correct and complete copy of such resolutions and that such resolutions were duly adopted and have not been amended or rescinded on or prior to the Closing Date.

9.2 Deliveries by Parent to Company. Parent shall deliver to the Company:

- (a) the Ancillary Agreements to which Parent or Sub is a party, duly executed by each party thereto other than the Company or the Stockholders;
- (b) any Consents required to be obtained by Parent;
- (c) the Parent Closing Certificate;
- (d) the Merger Shares to be issued to the Stockholders (less the Merger Shares to be held back in the Escrow Fund by Parent as provided for herein);
- (e) a copy of the text of the resolutions by which the board of directors of the Company approved the Merger and this Agreement and a certificate by its corporate secretary certifying to the Company that such copy is a true, correct and complete copy of such resolutions and that such resolutions were duly adopted and have not been amended or rescinded on or prior to the Closing Date; and
- (f) the opinion of Pillsbury, dated as of the Closing Date, as provided for in Section 7.6;

ARTICLE 10.

POST-CLOSING MATTERS: ADJUSTMENTS10.1 Review of Closing Balance Sheet

(a) Preparation of Final Balance Sheet. As soon as practicable after the Effective Time, the Company shall cause Ernst & Young (or another comparable independent accounting firm selected by the Company and Parent (the "Auditors")) to review the November 30 Balance sheet to determine whether there were any liabilities of the Company that should have been recorded on the November 30 Balance Sheet under GAAP but were not disclosed or recorded on the November 30 Balance Sheet (the "Special Review"). The purpose of the Special Review is to determine whether any adjustments are required to be made to the "Total liabilities" set forth on the face of the November 30 Balance Sheet. The Auditors will provide a report of the results of the Special Review to Parent and Gunderson within 30 days after the Effective Time. In the event that the Auditors do not (i) complete the Special Review or (ii) provide a report of the results of the Special Review within 30 days after the Effective Time, the November 30 Balance Sheet will be deemed to be accepted as is, without any adjustments, and Parent shall have no rights under 10.3(a) hereof.

(b) Review Requirements: The Special Review shall be conducted by the Auditors in accordance with GAAP and solely for the purpose of determining whether there were any liabilities that were not disclosed or recorded on the November 30 Balance Sheet that should have been disclosed or recorded on the November 30 Balance Sheet in accordance with GAAP. During the course of the Special Review, the Company shall cooperate with the Auditors, provide access to all pertinent accounting records and information related to the Company.

10.2 Escrow of Merger Shares

(a) Establishment of the Escrow Funds. As soon as practicable after the Effective Time, the Escrow Shares (consisting of the Escrow Fund), without any act of any Preferred Stockholder, will be held back by Parent, such holdback to be governed by the terms set forth herein and at Parent's sole cost and expense. The portion of the Escrow Shares contributed on behalf of each Preferred Stockholder shall be in proportion to the aggregate number of shares of Parent Common Stock that such holder would otherwise be entitled under Section 2.6. Notwithstanding the references in this Agreement to the "escrow" and the Escrow Shares, the parties acknowledge and agree that Parent is acting as a depository and not as an escrow agent pursuant to this Article 10.

10.3 Recourse to the Escrow Shares; Adjustments.

(a) The Escrow Shares shall be available to compensate Parent in the event that upon the Special Review conducted pursuant to Section 10.1 above, the Auditors determine that the "Total liabilities" set forth on the face of the November 30 Balance Sheet are required to be increased by at least \$500,000, or as otherwise set forth in this Section 10.3.

(b) Parent shall be entitled to retain such number of Escrow Shares as equals the quotient obtained by dividing (x) the difference between (i) the sum of (A) any New Liabilities plus (B) the dollar amount of any increase in "Total liabilities" required to be made as a result of the Special Review minus (ii) \$500,000, by the (y) quotient obtained by dividing \$5,000,000 by the Number of Parent Shares. For purposes of this paragraph, "New Liabilities" means the sum of any individual liabilities Parent shall discover after the date of this Agreement that (x) the Company incurred during the period beginning on December 1, 2000 and ending on the date of this Agreement, (y) is a liability which the Company did not disclose to Parent under this Agreement, including Appendix III, or any document delivered in connection herewith, or did not disclose to Parent the facts underlying such liability or liabilities and (z) is greater than \$25,000.

(c) In addition, notwithstanding any other adjustments that may be made under this Section 10.3, and without regard to any threshold limitation except for the \$25,000 threshold set forth herein, if during the period beginning on the date hereof and ending on the Closing Date, the Company shall incur any individual liability or liabilities each of which is in excess of \$25,000, and the incurrence of which was not provided for or consented to in writing by Parent under Section 6.1 (the "Post-Signing Liabilities") then Parent shall be entitled to retain such number of Escrow Shares as equals the quotient obtained by dividing (x) the aggregate dollar amount of the Post-Signing Liabilities by (y) the quotient obtained by dividing \$5,000,000 by the Number of Parent Shares.

(d) Notwithstanding anything herein to the contrary, it is expressly acknowledged that the recourse and adjustments provided for in this Section 10.3 are not mutually exclusive and that the exercise of Parent's rights under any subsection hereof shall not preclude Parent's exercise of rights granted to it under any other subsection of this Section 10.3. Notwithstanding the foregoing, except for any claims based on fraud, this Section 10.3 is Parent's sole remedy and recourse for the subject matter hereof and in no event shall Parent have any additional rights or claims against the Company, whether or not the adjustments provided for in this Section 10.3 shall exceed the amount of the Escrow Shares.

10.4 Escrow Periods, Distribution of Escrow Shares and Cash upon Termination of Escrow Period.

(a) Subject to the following requirements, the Escrow Fund shall be in existence immediately following the Effective Time and shall terminate at 5:00 p.m., Central Time, on the thirty first day following the Closing Date (the period of time from the Effective Time through and including such termination date is referred to herein as the "**Escrow Period**"); and all shares of Parent Common Stock and any distributions with respect thereto remaining in the Escrow Fund at the end of the Escrow Period shall be distributed within five (5) business days.

(b) Parent shall hold and safeguard the Escrow Shares (and any distributions with respect thereto) during the Escrow Period, shall treat such Escrow Fund as a trust fund in accordance with the terms of this Agreement and not as the property of Parent and shall hold and dispose of the Escrow Shares (and any distributions with respect thereto) only in accordance with the terms hereof.

Any shares of Parent Common Stock or other equity equivalent securities issued or distributed by Parent in connection with a stock split, recapitalization or other similar event ("New Shares") in respect of Parent Common Stock in the Escrow Fund which have not been released from the Escrow Fund shall be added to the Escrow Fund. New Shares issued in respect of shares of Parent Common Stock which have been released from the Escrow Fund shall not be added to the Escrow Fund but shall be distributed to the record holders thereof. All distributions on Parent Common Stock, other than in Parent Common Stock or other equity equivalent securities issued or distributable by Parent in connection with a stock split, recapitalization or other similar event, shall not be added to the Escrow Fund but shall be distributed to the record holders of the Parent Common Stock on the record date set for any such distribution. Each Preferred Stockholder immediately prior to the Effective Time shall have voting rights with respect to the shares of Parent Common Stock contributed to the Escrow Fund by such Preferred Stockholder (and on any voting securities added to the Escrow Fund in respect of such shares of Parent Common Stock).

ARTICLE 11.

MISCELLANEOUS

11.1 Termination.

- (a) This Agreement may be terminated at any time prior to Closing:
 - (i) By the written agreement of Parent and the Company;
 - (ii) By the Company if the Closing shall not have occurred on or before December 31, 2000, other than due to a breach of this Agreement by the party seeking to terminate;
 - (iii) By Parent if the Closing shall not have occurred on or before January 15, 2001 other than due to a breach of this Agreement by the party seeking to terminate;
 - (iv) By Parent or the Company if a court of competent jurisdiction or governmental authority shall have issued a final and nonappealable order in writing, or shall have taken such other action having the effect of permanently restraining, enjoining, or otherwise prohibiting the Merger;
 - (v) By Parent or the Company if, prior to the Effective Time, it is determined that there are aggregate New Liabilities in excess of \$2,000,000.
- (b) In the event of termination of this Agreement:
 - (i) The provisions of the Confidentiality Agreement and Sections 11.1(b), 11.4, 11.6, 11.8 through 11.10, and 11.12 through 11.13 of this Agreement shall continue in full force and effect; and

(ii) No party hereto shall have any liability to any other party to this Agreement, except for any willful breach of, or knowing misrepresentation made in, this Agreement occurring prior to the formal termination of this Agreement.

11.2 Assignment. Neither this Agreement nor any of the rights or obligations hereunder may be assigned by the Company or any Stockholder without the prior written consent of Parent, or by Parent or Sub without the prior written consent of the Company.

11.3 Notices. Unless otherwise provided herein, any notice, request, instruction or other document to be given hereunder by any party to the other shall be in writing and delivered in person or by courier, telegraphed, telexed, sent by facsimile transmission, sent via overnight delivery service or mailed by registered or certified mail (such notice to be effective upon receipt), as follows:

If prior to the Closing, to the Company:

PlanerU, Inc.
444 Market Street
San Francisco, California
Attention: Bill Purcell
Chief Executive Officer
Fax: (415) 979-0660

With a copy to:

Gunderson Dettmer Stough Villeneuve Franklin & Hachigan, LLP
600 Lincoln Street
Waltham, MA 02451
Attn: Kevin J. Sullivan
Fax: (781) 622-1622

If to Parent or Sub or, if after the Closing, to the Surviving Corporation:

eCPG.net, Inc.
547 West Jackson Boulevard
Suite 900
Chicago, Illinois 60661
Attention: Judy Sprieser
Chief Executive Officer
Fax: (312) 431-6770

With a copy to:

Pillsbury Madison & Sutro LLP
8330 Boone Boulevard
Suite 400
Vienna, VA 22182
Attention: Jonathan M. Aberman
Fax: (703) 744-7605

or to such other place and with such other copies as any party may designate as to itself by written notice to the others in accordance herewith.

11.4 Choice of Law. This Agreement shall be construed and interpreted and the rights of the parties determined in accordance with the laws of the State of Delaware without regard to its conflicts of laws provisions.

11.5 Representation By Counsel. Each party hereto represents and agrees with the other that it has been represented by or had the opportunity to be represented by, independent counsel of its own choosing, and that it has had the full right and opportunity to consult with its respective attorney(s), that to the extent, if any, that it desired, it availed itself of this right and opportunity, that it or its authorized officers (as the case may be) have carefully read and fully understand this Agreement in its entirety and have had it fully explained to them by such party's respective counsel, that each is fully aware of the contents thereof and its meaning, intent and legal effect, and that it or its authorized officer (as the case may be) is competent to execute this Agreement and has executed this Agreement free from coercion, duress or undue influence.

11.6 Entire Agreement; Amendments and Waivers. This Agreement, together with exhibits and schedules hereto and, the Ancillary Agreements, constitute the entire agreement among the parties pertaining to the subject matter hereof and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties. No supplement, modification or waiver of this Agreement shall be binding unless executed in writing by the party to be bound thereby. This Agreement may be amended with the approval of the respective Boards of Directors of Parent and the Company at any time; provided, however, that no amendment shall be made without the further approval of the Stockholders if such approval is required under applicable law. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided. The waiver by any party of any of the conditions precedent to its obligations under this Agreement will not preclude it from seeking redress for breach of this Agreement other than with respect to the condition so waived.

11.7 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

11.8 Invalidity. In the event that any one or more of the provisions contained in this Agreement or in any other instrument referred to herein, shall, for any reason, be held to be

invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement or any other such instrument, and the application of such provision to other persons or circumstances will be interpreted so as reasonably to effect the intent of the parties hereto. The parties further agree to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the economic, business and other purposes of such void or unenforceable provision.

11.9 Expenses. Each party hereto shall pay its own respective legal, accounting, advisory and other fees, and other out-of-pocket expenses incurred in connection with the transactions contemplated herein and will not look to any other party for any contribution toward such expenses. Except as set forth in the following sentence, expenses incurred by the Company in excess of \$150,000 shall be borne by the Stockholders. The Company may incur such expenses in excess of \$150,000, but only with the prior consent of Parent, which consent shall not be unreasonably withheld. Any such additional costs will result in a reduction in the number of Merger Shares delivered to the Stockholders. The Company will not pay its Stockholders' transaction expenses.

11.10 Publicity. Except as required by law, neither party shall issue any press release or make any public statement regarding the transactions contemplated hereby without the prior approval of the other party which approval shall not be unreasonably withheld, conditioned or delayed.

11.11 No Third Party Beneficiaries. This Agreement shall be binding upon and inure solely to the benefit of each party hereto and their successors and assigns, and nothing in this Agreement, express or implied, is intended to or shall confer upon any other person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement, including, without limitation, by way of subrogation, except as specifically set forth in Article 4 and Article 10 hereof.

11.12 Service of Process: Consent to Jurisdiction.

(a) SERVICE OF PROCESS. EACH OF THE PARTIES HERETO IRREVOCABLY CONSENTS TO THE SERVICE OF ANY PROCESS, PLEADING, NOTICES OR OTHER PAPERS BY THE MAILING OF COPIES THEREOF BY REGISTERED, CERTIFIED OR FIRST CLASS MAIL, POSTAGE PREPAID, TO SUCH PARTY AT SUCH PARTY'S ADDRESS SET FORTH HEREIN, OR BY ANY OTHER METHOD PROVIDED OR PERMITTED UNDER ILLINOIS LAW.

(b) CONSENT AND JURISDICTION. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY (i) AGREES THAT ANY SUIT, ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF THIS AGREEMENT MAY BE BROUGHT IN, IN ANY STATE COURT OF GENERAL JURISDICTION IN CHICAGO, ILLINOIS OR IN THE FEDERAL DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS; (ii) CONSENTS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUCH SUIT, ACTION OR PROCEEDING; AND (iii) WAIVES ANY OBJECTION WHICH

SUCH PARTY MAY HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY SUCH COURT.

11.13 Attorney Fees. If any party to this Agreement brings an action to enforce its rights under this Agreement in accordance with the provisions hereof, the prevailing party shall be entitled to recover its actual out-of-pocket costs and expenses, including reasonable attorney fees reasonably incurred in connection with such action, including any appeal of such action.

[remainder of page intentionally left blank; signature pages follow]

IN WITNESS WHEREOF, each party hereto has executed this Agreement or caused this Agreement to be duly executed on its behalf by its officer thereunto duly authorized, as of the day and year first above written.

eCPG.NET, INC.,
a Delaware corporation

By: _____

Judy Sprieser
Chief Executive Officer

TPU ACQUISITION CORPORATION,
a Delaware corporation

By: _____

Judy Sprieser
Chief Executive Officer

PLANETU, INC.,
a Delaware corporation

By: _____

Bill Purcell
Chief Executive Officer

IN WITNESS WHEREOF, each party hereto has executed this Agreement or caused this Agreement to be duly executed on its behalf by its officer thereunto duly authorized, as of the day and year first above written.

eCPG.NET, INC.,
a Delaware corporation

By: _____

Judy Sprieser
Chief Executive Officer

TPU ACQUISITION CORPORATION,
a Delaware corporation

By: _____

Judy Sprieser
Chief Executive Officer

PLANETU, INC.,
a Delaware corporation

By: _____

Bill Purcell
Chief Executive Officer

EMPLOYMENT, SEVERANCE AND RELEASE AGREEMENT

This Agreement is made this 20th day of September, 2001 (the "*Effective Date*"), between eCPG.net, Inc. (d/b/a Transora), a Delaware corporation ("*Company*") and Bill Purcell ("*Employee*").

WHEREAS, Employee entered into an Employment Agreement with planetU, Inc., a Delaware corporation, effective December 10, 1996 (the "*Employment Agreement*");

WHEREAS, the Company acquired planetU on December 29, 2000 and assumed such liability for said Employment Agreement as described in the acquisition agreement between the Company and planetU; and

WHEREAS, the Company and Employee mutually desire to terminate the Employment Agreement and enter into this new Employment, Severance and Release Agreement (the "*Agreement*");

THEREFORE, the parties mutually agree as follows:

1. Relationship Between the Parties: As of the Effective Date, the Employee will have the title of Chief New Markets Officer, but will not be an officer of the Company and will not so represent himself. Employee's principal work location will be in his residence in San Ramon, CA.
2. Employment Term: The period of employment will be from the Effective Date until January 2, 2002 unless terminated earlier as provided herein;
3. Compensation: For the term of the agreement, Employee shall receive compensation on a pro-rata basis at an annualized rate of \$275,000 (payable in accordance with Company practice). In addition, Employee shall be paid a pro-rata share of any incentive bonus, if any, earned as though Employee were employed by the Company through January 31, 2002 at a target rate of 75% of his annual compensation. This incentive bonus shall be paid at the same ratio as other Transora employees at the Chief officer level. This means that if the other Chiefs' bonuses are payable at a 100% rate, Employee shall receive 100% of his target rate of 75% of his annual salary, pro-rated for the period through January 31, 2002. If no incentive bonuses are paid to other Chiefs for the period covered by this employment agreement, Employee shall receive no incentive bonus. The intent of this agreement is for Employee to receive any incentive and other bonuses (if any), stock options, employee benefits, etc. that the Company may award employees at the Chief level during the term of this agreement on a pro-rated basis taking into account the term of this agreement. If employees at the Chief level generally receive compensation adjustments, Employee shall receive the benefit of such adjustments, if any. In no event will the compensation be reduced from the annual rate of \$275,000. Any compensation and other benefits will be reduced for federal and state taxes. Finally, Transora will reimburse Employee for reasonable expenses in accordance with the Company's travel and entertainment policies for necessary travel, entertainment and home office expenses as afforded other employees of the Company at the Chief level.

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4. Time committed to duties: From the July 31, 2001 to October 31, 2001, Employee will work approximately 50% to 67% of normal work time each month (87 to 116 hours per month) on projects assigned to him by Transora. From November 1, 2001 to January 31, 2002, Employee will work approximately 25% to 33% of normal work time each month (43 to 57 hours per month) on projects assigned to him by Transora.
5. Termination: Either party may terminate this agreement for any reason at any time with 10 days written notice. In the event Transora terminates the agreement, Transora will pay Employee on the date of termination an amount equal to the Severance Payment described below, plus an amount equal to the salary and pro-rata target bonus (adjusted to the date of termination) between the date of termination and January 31, 2002. In the event Employee terminates the agreement, Transora will only pay Employee an amount equal to the Severance Payment described below.
6. Severance Payment. Employee and the Company agree to the following terms in satisfaction of any and all severance obligations owed by the Company to Employee, including any severance obligations contained in the Employment Agreement originally entered into between planetU and Employee:
 - a. Employee will receive a single payment on the earlier of December 31, 2001 or the date of early termination of this agreement in the sum of \$137,500, less any applicable withholding taxes. Additionally, on December 31, 2001, Employee shall receive an amount equal to the cost for Employee to purchase benefits under COBRA similar to those he currently receives, adjusted upward for the amount required to "gross up" the COBRA payment amount for the effect of federal and state taxes. These amounts will be reduced for federal and state taxes. These COBRA benefits shall be paid by the Company for a period extending through July 31, 2002. Additionally, should the Employee not terminate this agreement, Transora will pay Employee an additional special payment of \$20,977.56, less any applicable withholding taxes on December 31, 2001. Bonus incentive payment due Employee pursuant to the terms of Paragraph 3 above, if any, shall be paid to Employee at the same time any such payments are made to other Chief level employees.
7. Duties: Employee agrees to undertake such activities as he may be directed to undertake by the Chief Executive Officer of the Company from time to time. The parties currently anticipate that initially those duties will include: the continued development and management of the Company's Asia strategy; participation, often by telephone, in Leadership meetings and other senior management discussions; participation in strategy planning relative to retailers, retailer exchanges, planetU, international expansion, and external financing. Time spent by Employee traveling on the Company's behalf will be included in the time commitment provided above.

8. Intellectual property and other non-employee activities: During the term of this agreement, Employee may, at his sole discretion, pursue any professional and personal activities so long as he complies with the terms of this agreement. Employee shall be free to pursue business interests that overlap in part with the activities of Transora, but Employee may not during the term of this agreement perform services that Materially Conflict with the interests of Transora as described below. For purposes of this agreement, activities which "Materially Conflict" shall be limited to those that are provided a) for GNX, WWRE, CPGmarkets and Novopoint, or b) involve the Employee's active participation in the sales process to current investors of Transora for i) ASP services related to maintaining item description information, ii) or ASP services or Software, other than Syncra, that has as its principal feature the synchronization of collaboratively developed distribution plans of CPG manufacturers with their suppliers and with retailer headquarters in ways generally similar to those currently performed by Syncra, or iii) ASP services for auctions, ASP services for collaborative procurement, ASP services for logistics services, or ASP services for consumer discounts that link retailer web sites to their frequent shopper cards. Notwithstanding anything to the contrary, nothing in the foregoing shall limit Employee should the action be done as part of his services for Transora or with Transora's permission, and nothing in the preceding subsection (b) shall restrict Employee from having conceptual conversations with any party otherwise restricted, and nothing in the preceding subsection (b) shall restrict Employee from providing any services otherwise restricted should Transora no longer actively market the service. Should ambiguity result in questions whether an activity is restricted, the Parties agree to negotiate in good faith to resolve the issue. In connection with the performance of his duties hereunder, Employee shall be bound by the usual and customary restrictions imposed on other Company employees. Employee shall not be bound by those restrictions with respect to his non-Transora activities, including assignment of inventions, and competitive activities relating to the planetU business described in the Employment Agreement between Employee and planetU. Any intellectual property arising from Employee's duties while providing services for Transora described in this agreement shall be the property of the Company. Any intellectual property arising from the Employee's non-Company activities shall be the property of Employee.
9. Indemnification.
- a. Company agrees to defend and hold harmless Employee against any damages or reasonable expenses in connection with any actual or threatened lawsuits, proceedings, or other claims, or defenses arising from Employee's performing the Duties under this Agreement to the same extent he would be indemnified if he were a full time employee. With respect to any such claim, the Company shall have the right to defend, contest or settle such claim at its own expense and sole discretion and with counsel of its own selection.
 - b. Employee agrees not to represent himself as connected in any way with Transora when not performing the duties for Transora described above. For any non-Transora activities conducted by Employee during the term of this agreement, Employee agrees to indemnify and hold the Company harmless from any and all

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claims, demands, actions and liabilities, including costs and attorneys' fees, as the result of any action or inaction or claim which arises as a result of Employee's conduct which is not related to his employment duties under the terms of this agreement. With respect to any such claim, the Employee shall have the right to defend, contest or settle such claim at his own expense and sole discretion and with counsel of his own selection.

10. Continuing Obligations. Employee and Transora shall have a continuing obligation to observe the provisions of the confidentiality agreement between them.
11. No Disparagement; Non-Contravention. As a condition of receiving the benefits and payments described in this Agreement, Employee agrees to keep the financial details of this Agreement confidential except as may be necessary to perform the duties above and except as may be necessary to communicate with attorneys, accountants and tax preparers in order to take advantage of the payments and benefits provided in this Agreement. Employee may show interested parties a redacted version of this agreement, which shall not contain the financial terms provided herein. Except as part of normal business communications as part of his duties providing services for Transora, Employee agrees not to disparage, criticize or otherwise call into question the Company or its policies and corporate direction, provided however, that nothing contained herein shall (i) restrict Employee from making any statements (A) in connection with any legal, regulatory or administrative proceeding or investigation or (B) as may be required by law. In the event of a material breach of Employee's obligations under this Agreement, the Company may, in addition to any other remedy it may have at law or equity, rescind this Agreement and the benefits hereunder and deem Employee's employment with the Company to have been terminated with cause under the Employment Agreement between Employee and planetU as of the Effective Date, with such termination of employment being subject to the terms and conditions of the Employment Agreement.
12. Satisfaction, Release and Waiver. Employee acknowledges that all obligations due to him under the Employment Agreement have been fully satisfied. Employee releases and forever discharges the Company, its officers, directors, employees, agents, parent, subsidiaries, successors and assigns, from any claims, demands, liabilities or obligations of any kind, whether arising from contract, statute, common law or otherwise, including but not limited to, claims for breach of contract, wrongful termination, discrimination in violation of the Age Discrimination Act of 1967 ("ADA") and any other claim in law or equity. Pursuant to the terms of the Older Workers' Benefit Protection Act ("OWBPA"), and the Age Discrimination in Employment Act ("ADEA"), the Employee acknowledges that he has twenty-one (21) days from the date of presentation of this Agreement to him, which occurred on November 13, 2001, in which to consult with an attorney regarding the terms and conditions of this Agreement. The Employee acknowledges that, by the terms of this Agreement, the Employee has been advised in writing that during the aforementioned twenty-one (21) day period, the Employee should consult with an attorney regarding the terms and conditions of this Agreement. The Employee further acknowledges that, by the terms of this Agreement, he has been advised to consult with an attorney regarding execution of this Agreement, and that following execution of this Agreement, the

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Employee has seven (7) days in which he may revoke this Agreement and that this Agreement does not become effective until the seventh day following execution of this Agreement. Any revocation should be in writing and should be delivered or mailed by certified mail to Ms. Laurie David, Chief Human Resources Officer, Transora, 10 South Riverside Plaza, Suite 2000, Chicago, Illinois 60606. The parties agree that no payments or other transaction described in this Agreement shall occur until the eighth day after this Agreement is executed by Employee; *provided* that Employee has not revoked his agreement prior to that time.

FURTHERMORE, EMPLOYEE HAS BEEN ADVISED THAT AS A CALIFORNIA EMPLOYEE, CALIFORNIA CIVIL CODE SECTION 1542 LIMITS GENERAL RELEASE OF CLAIMS WHICH ARE PRESENTLY UNKNOWN OR NOT SUSPECTED TO EXIST IN EMPLOYEE'S FAVOR AT THE TIME OF EXECUTING THIS RELEASE. THUS, IN LIGHT OF THE FOREGOING, EMPLOYEE SPECIFICALLY ACKNOWLEDGES AND AGREES TO GIVE UP ANY RIGHTS GIVEN TO EMPLOYEE BY CALIFORNIA CIVIL CODE SECTION 1542 AND EMPLOYEE GIVES UP ALL EXISTING CLAIMS WHICH ARE PRESENTLY UNKNOWN BY EMPLOYEE OR ARE NOT SUSPECTED TO EXIST IN EMPLOYEE'S FAVOR AT THE TIME OF EXECUTING THIS RELEASE.

13. Entire Agreement. This Agreement constitutes the entire agreement and understanding of the parties concerning the obligations of the Company toward Employee and the Employee toward the Company, and supersedes, satisfies and preempts any previous understandings, agreements, obligations, promises or representations, written or oral, including, but not limited to, the Employment Agreement between Employee and planetU, which the parties agree is hereby terminated, except as specifically provided herein.
14. Miscellaneous.
 - a. Severability. Whenever possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision or any other jurisdiction, but this Agreement will be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein.
 - b. Counterparts. This Agreement may be executed in separate counterparts, each of which is deemed to be an original and all of which taken together constitute one and the same agreement.
 - c. Governing Law. All questions concerning the construction, validity and interpretation of this Agreement and all disputes arising hereunder will be governed by and construed in accordance with the domestic laws of the State of Illinois, without giving effect to any choice of law or conflict of law provision or

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rule that would cause the application of the laws of any jurisdiction other than the State of California.

- d. Successors and Assigns. Except as otherwise provided herein, this Agreement shall bind and inure to the benefit of and be enforceable by the Company and Employee and their respective successors and assigns; provided that the rights and obligations of Employee under this Agreement shall not be assignable without the prior written approval of the Company. For purposes of this Agreement, "successor" shall mean, without limitation, any entity that acquires a majority of the securities of the Company, or any entity that acquires substantially all or substantially all of the assets of the Company.
- e. Remedies. Each of the parties to this Agreement will be entitled to enforce its rights under this Agreement specifically, to recover damages and costs (including reasonable attorney's fees) caused by any breach of any provision of this Agreement and to exercise all other rights existing in its favor. The parties hereto agree and acknowledge that money damages may not be an adequate remedy for any breach of the provisions of this Agreement and that any party may in its sole discretion apply to any court of competent jurisdiction having the power to grant equitable remedies for specific performance and/or other injunctive relief in order to enforce or prevent any violations of the provisions of this Agreement.
- f. Amendment and Waiver. The provisions of this Agreement may be amended and waived only with the prior written consent of the Company and Employee.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

Transora

By: 

Name:

JEFFREY SCHMIDT

Title:

CHIEF LEGAL OFFICER

Date:

11/14/01


Employee

Date:

11/14/01

ATTACHMENT A

Acknowledgement of Receipt

I acknowledge receipt of Transora's Employee Handbook – Rules of the Game. I understand that it is my responsibility to read and understand the information it contains and abide by its guidelines. I agree to ask questions about the information in this handbook as they arise. I also understand that the information, procedures, rules and benefits described may change from time to time to adapt to business considerations.

I also understand that although guidelines may change, my employment with Transora will not be changed except by a separate written agreement signed by an officer of the Company.

I also agree that I will submit any disputes arising out of my employment, including discrimination and harassment claims to arbitration consistent with our Arbitration Agreement for binding resolution.

Date: 9/4/2001

Signature: Edmund M Martin
ED MARTIN

ASSET PURCHASE AGREEMENT

by

and

among

**ADS ALLIANCE DATA SYSTEMS, INC.,
eCPG.net, INC. (dba TRANSORA, INC.), and
PLANETU, INC.**

Dated: December 3, 2002

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ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement dated December 3, 2002, is by and among (i) ADS Alliance Data Systems, Inc., a Delaware corporation ("**Buyer**"), on the one hand, and (ii) planetU, Inc., a Delaware corporation ("**Seller**"), and eCPG.net, Inc., (dba Transora, Inc.), a Delaware corporation ("**Parent**" and together with Seller, each a "**Seller Party**" and collectively, "**Seller Parties**"), on the other hand.

RECITALS

A. Seller Parties have developed a service known as Targeted Marketing Service, which utilizes the Purchased Assets for the purpose of delivering targeted, electronic promotional offers to opt-in consumers, which can be redeemed at certain retailer point-of-sale systems (the "**Business**").

B. Seller Parties desire to sell to Buyer, and Buyer desires to purchase from Seller Parties, the Purchased Assets and to assume from Seller Parties the Assumed Liabilities all on the terms and subject to the conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual promises herein made, and in consideration of the representations, warranties, and covenants contained herein, Buyer and Seller Parties agree as follows:

ARTICLE 1. DEFINITIONS

"**Action**" means any action, appeal, petition, plea, charge, complaint, claim, suit, demand, litigation, arbitration, mediation, hearing, or any inquiry or investigation by a Governmental Body, or similar event, occurrence, or proceeding.

"**Active Employees**" is defined in Section 6.14.

"**Affiliate**" or "**Affiliated**" with respect to any specified Person means a Person that, directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, such specified Person. For this definition, "control" (and its derivatives) means the possession, directly or indirectly, of 20% or more of the voting Equity Interests of a Person, or the power, directly or indirectly, to vote 20% or more of the voting Equity Interests of a Person.

"**Agreement**" means this Asset Purchase Agreement, together with all Schedules hereto, as the same may be amended, supplemented or otherwise modified from time to time in accordance with Section 11.13.

"**Ancillary Agreements**" means the Bill of Sale and the Transition Services Agreement.

"**Assumed Liabilities**" is defined in Section 2.2.

1
“**Basis**” means any past or current fact, situation, circumstance, status, condition, activity, practice, plan, occurrence, event, incident, action, failure to act, or transaction about which the relevant Person has Knowledge that forms or could form the basis for any specified consequence.

“**Bill of Sale**” means the Bill of Sale and Assignment and Assumption Agreement in the form of Exhibit A.

“**Breach**” means (a) any breach, inaccuracy, failure to perform, failure to comply, conflict with, failure to notify, default, or violation or (b) with respect to Contracts included in the Purchased Assets, any other act, omission, event, occurrence or condition the existence of which would permit any Person to accelerate any obligation or terminate, cancel, or modify detrimentally any right or obligation of the acting party.

“**Business**” is defined in Recital A of this Agreement.

“**Buyer**” is defined in the preamble to this Agreement.

“**Buyer’s Indemnification Ceiling**” is defined in Section 9.5(b)(i).

“**Closing**” is defined in Section 4.1.

“**Closing Date**” is defined in Section 4.1.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Commitment**” means (a) options, warrants, convertible securities, exchangeable securities, subscription rights, conversion rights, exchange rights, or other Contracts that could require a Person to issue any of its Equity Interests or to sell any Equity Interests it owns in another Person; (b) any other securities convertible into, exchangeable or exercisable for, or representing the right to subscribe for any Equity Interest of a Person or owned by a Person; (c) statutory pre-emptive rights or pre-emptive rights granted under a Person’s Organizational Documents; and (d) stock appreciation rights, phantom stock, profit participation, or similar rights with respect to a Person.

“**Contract**” means any contract, agreement, arrangement, commitment, letter of intent, memorandum of understanding, heads of agreement, promise, obligation, right, instrument, document, or other similar understanding, whether written or oral.

“**Copyrights**” means copyrights, whether registered or unregistered, in published works and unpublished works, and pending applications to register the same.

“**Damages**” means all damages, losses, Liabilities, payments, amounts paid in settlement, obligations, fines, interests, assessments, penalties, costs of burdens associated with performing injunctive relief, other costs (including reasonable fees and expenses of outside attorneys, accountants and other professional advisors and expert witnesses, and the allocable portion of the relevant Person’s internal costs) of investigation, preparation, and litigation in connection with any Action, or Threatened Action, and other costs and expenses of any kind or nature whatsoever, whether known or unknown, contingent or vested, matured or unmatured, and whether or not resulting from third-party claims.

“Developers” is defined in Section 6.9(d).

“Earn-Out” is defined in Section 10.1(a).

“Earn-Out Audit” is defined in Section 10.2.

“Earn-Out Period” is defined in Section 10.1(a)(i).

“Employee Agreement” means each management, employment, severance, consulting, non-compete, confidentiality, or similar Contract between a Seller Party, on the one hand, and any employee, consultant, independent contractor, or other individuals providing services for or on behalf of the Business, on the other hand.

“Employee Benefit Plan” means each plan, program, policy, payroll practice, contract, agreement (including Employee Agreements), or other arrangement providing for compensation, severance, termination pay, performance awards, stock or stock related awards, fringe benefits or other employee benefits of any kind, whether formal or informal, funded or unfunded, written or oral and whether or not legally binding, including each “employee benefit plan” within the meaning of Section 3(3) of ERISA, each “Multiemployer Plan” within the meaning of Sections 3(37) or 4001(a)(3) of ERISA, each Employee Pension Benefit Plan (as defined in ERISA Section 3(2)), and each Employee Welfare Benefit Plan (as defined in ERISA 3(1)).

“Encumbrance” means any Order, Security Interest, Contract, easement, covenant, community property interest, equitable interest, right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income, or exercise of any other attribute of ownership.

“Enforceable” means a Contract is “Enforceable” if it is the legal, valid, and binding obligation of the applicable Person enforceable against such Person in accordance with its terms, except as such enforceability may be subject to the effects of bankruptcy, insolvency, reorganization, moratorium, or other Laws relating to or affecting the rights of creditors, and general principles of equity.

“Equity Interest” means (a) with respect to a corporation, any and all shares of capital stock and any Commitments with respect thereto, (b) with respect to a partnership, limited liability company, trust or similar Person, any and all units, interests, or other partnership/limited liability company interests, and any Commitments with respect thereto, and (c) any other direct or indirect equity ownership or participation.

“ERISA” means the Employee Retirement Income Security Act of 1974 or any successor law, and regulations and rules issued pursuant to that Act or any successor law.

“Excluded Assets” is defined in Section 6.8(a).

“Final Allocation Schedule” is defined in Section 3.2.

“GAAP” means United States generally accepted accounting principles as in effect from time to time.

"Governmental Body" means any legislature, agency, bureau, branch, department, division, commission, court, tribunal, magistrate, justice, multi-national organization, quasi-governmental body, or other similar recognized organization or body of any federal, state, county, municipal, local, or foreign government or other similar recognized organization or body exercising similar powers or authority.

"Hired Employees" means those Active Employees who have executed an Offer and Notice and have provided notice to Parent that such Active Employee will be terminating his or her employment effective as of the Closing.

"Indemnification Claim" is defined in Section 9.4(a).

"Indemnified Buyer Parties" means Buyer and its officers, directors, managers, employees, agents, representatives, controlling Persons, stockholders, and their Affiliates.

"Indemnified Parties" means, individually and as a group, the Indemnified Buyer Parties and the Indemnified Seller Parties.

"Indemnified Seller Parties" means each Seller Party and its respective officers, directors, managers, employees, agents, representatives, controlling Persons, stockholders and their Affiliates.

"Indemnitor" means any party having any Liability to any Indemnified Party under this Agreement.

"Initial Purchase Price" is defined in Section 3.1(a).

"Intellectual Property" means any rights, licenses, liens, charges, Encumbrances, equities, and other claims that any Person may have to claim ownership, authorship or invention, to use, to object to or prevent the modification of, to withdraw from circulation, or control the publication or distribution of any Marks, Patents, Copyrights, or Trade Secrets.

"IRS" means the Internal Revenue Service.

"Joint Marketing Agreement" means the Joint Marketing Agreement in the form of Exhibit B.

"Knowledge" an individual will be deemed to have "Knowledge" of a particular fact or other matter if (a) such individual is actually aware of such fact or other matter or (b) a prudent individual when taking into account their position and responsibilities could be expected to discover or otherwise become aware of such fact or other matter in the course of conducting a reasonable investigation concerning the existence of such fact or other matter. A Person other than an individual will be deemed to have "Knowledge" of a particular fact or other matter if any individual who is serving, or who has at any time served, as a director or officer or similar position of such Person or a Subsidiary of such Person, has or at any time had, Knowledge of such fact or other matter.

"Law" means any law (statutory, common, or otherwise), constitution, treaty, convention, ordinance, equitable principle, code, rule, regulation, executive order, or other similar authority

enacted, adopted, promulgated, or applied by any Governmental Body, each as amended and now and hereinafter in effect.

“Liability” means any liability or obligation, whether known or unknown, asserted or unasserted, absolute or contingent, matured or unmatured, conditional or unconditional, latent or patent, accrued or unaccrued, liquidated or unliquidated, or due or to become due.

“Marks” means all fictitious business names, trading names, corporate names, domain names, registered and unregistered trademarks, service marks, and applications.

“Material Adverse Change (or Effect)” means a change (or effect) in the condition (financial or otherwise), properties, assets, Liabilities, rights, obligations, operations, or business which change (or effect), individually or in the aggregate, could reasonably be expected to be materially adverse to such condition, properties, assets, Liabilities, rights, obligations, operations, or business.

“Negotiators” is defined in Section 11.9(b).

“Non-Compete Termination Date” is defined in Section 7.5(a).

“Offer and Notice” means a letter making an offer of employment by Buyer and providing that upon acceptance of such offer, the Active Employee shall provide notice to Parent of his or her intention to terminate employment with the applicable Seller Party.

“Order” means any order, ruling, decision, verdict, decree, writ, subpoena, mandate, precept, command, directive, consent, approval, award, judgment, injunction, or other similar determination or finding by, before, or under the supervision of any Governmental Body, arbitrator, or mediator.

“Ordinary Course of Business” means the ordinary course of business consistent with past custom and practice (including with respect to quantity, quality and frequency) of Seller in the industry in which Seller does business.

“Organizational Documents” means the articles of incorporation, certificate of incorporation, charter, bylaws, articles of formation, regulations, operating agreement, certificate of limited partnership, partnership agreement, and all other similar documents, instruments or certificates executed, adopted, or filed in connection with the creation, formation, or organization of a Person, including any amendments thereto.

“Parent” is defined in the preamble to this Agreement.

“Patents” means all (a) patents and patent applications, and (b) business methods, inventions, and discoveries that may be patentable.

“Permit” means any permit, license, certificate, approval, consent, notice, waiver, franchise, registration, filing, accreditation, or other similar authorization required by any Law, Governmental Body, or Contract.

“Permitted Encumbrances” is defined in Section 6.8(b).

"Person" means any individual, partnership, limited liability company, corporation, association, joint stock company, trust, entity, joint venture, labor organization, unincorporated organization, or Governmental Body.

"Preexisting Code" is defined in Section 6.9(d).

"Proposed Allocation Schedule" is defined in Section 3.2.

"Purchased Assets" means those items listed on Schedule 2.1 including, but not limited to, all of the right, title and interest that Seller Parties possess and have the right to transfer in and to all of such items.

"Purchase Price" has the meaning specified in Section 3.1.

"Qualified TMS Categories" is defined in Section 10.1(a)(ii).

"Required Consents" is defined in Section 8.1(d).

"Schedules" means the Schedules to this Agreement.

"Security Interest" means any security interest, deed of trust, mortgage, pledge, lien, charge, claim, or other similar interest or right, except for (i) liens for taxes, assessments, governmental charges, or claims that are being contested in good faith by appropriate Actions promptly instituted and diligently conducted and only to the extent that a reserve or other appropriate provision, if any, has been made on the face of the financial statements in an amount equal to the Liability for which the lien is asserted, (ii) statutory liens of landlords and warehousemen's, carriers', mechanics', suppliers', materialmen's, repairmen's, or other like liens (including Contractual landlords' liens) arising in the Ordinary Course of Business and with respect to amounts not yet delinquent and being contested in good faith by appropriate proceedings, only to the extent that a reserve or other appropriate provision, if any, has been made on the face of the financial statements in an amount equal to the Liability for which the lien is asserted; and (iii) liens incurred or deposits made in the Ordinary Course of Business in connection with workers' compensation, unemployment insurance and other similar types of social security.

"Seller," "Seller Party," and "Seller Parties" are each defined in the preamble to this Agreement.

"Seller Parties' Indemnification Ceiling" is defined in Section 9.5(a)(i).

"Software" means computer software or middleware.

"Subsidiary" means, with respect to any Person: (a) any corporation of which more than 50% of the total voting power of all classes of the Equity Interests entitled (without regard to the occurrence of any contingency) to vote in the election of directors is owned by such Person directly or through one or more other Subsidiaries of such Person and (b) any Person other than a corporation of which at least a majority of the Equity Interest (however designated) entitled (without regard to the occurrence of any contingency) to vote in the election of the governing body, partners, managers or others that will control the management of such entity is owned by such Person directly or through one or more other Subsidiaries of such Person.

"Tax" means any federal, state, local, or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under Code Section 59A), customs, ad valorem, duties, capital stock, franchise, profits, withholding, social security, unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, including any interest, penalty, or addition thereto, whether disputed or not.

"Tax Return" means any return, declaration, report, claim for refund, or information return or statement relating to Taxes required to be filed with any Governmental Body, including any schedule or attachment thereto, and including any amendment thereof.

"Threatened" means a demand or statement has been made (orally or in writing) or a notice has been given (orally or in writing) that would lead a prudent Person to conclude that a cause of Action is likely to be asserted, commenced, taken, or otherwise initiated.

"Trade Secrets" means all know-how, trade secrets, confidential information, customer lists, Software (source code and object code), technical information, data, process technology, plans, drawings, and blue prints.

"Transaction Documents" means this Agreement, the Ancillary Agreements, and the Joint Marketing Agreement.

"Transactions" means: (a) the sale of the Purchased Assets by Seller to Buyer and Buyer's delivery of the Purchase Price and assumption of the Assumed Liabilities therefor; (b) the execution, delivery, and performance of all of the documents, instruments, and agreements to be executed, delivered, and performed in connection herewith including each Ancillary Agreement, and the Joint Marketing Agreement; and (c) the performance by Buyer and Seller Parties of their respective covenants and obligations (pre- and post-Closing) under this Agreement.

"Transition Services Agreement" means the Transition Services Agreement in the form of Exhibit C.

ARTICLE 2. PURCHASE AND SALE OF ASSETS

2.1 Purchase and Sale of Assets.

On and subject to the terms and conditions of this Agreement, Buyer agrees to purchase from Seller Parties, and Seller Parties agree to sell, transfer, convey, and deliver to Buyer, all of Seller Parties' right, title, and interest in and to the Purchased Assets.

2.2 Assumed Liabilities.

On and subject to the terms and conditions of this Agreement, Buyer shall assume and agree to pay when due, and perform, Liabilities of any kind whatsoever that (a) arise or are required to be performed after the Closing under any Contract assigned pursuant to the Bill of Sale; (b) arise out of its ownership and operation of the Purchased Assets after the Closing, or are related to events arising after the Closing; and (c) are related to the Hired Employees for claims

arising after the Closing Date (collectively, the "*Assumed Liabilities*"). Buyer will not assume or have any responsibility, however, with respect to any other obligation or Liability of Seller Parties not included within the Assumed Liabilities.

ARTICLE 3. PURCHASE PRICE

3.1 Purchase Price.

The "*Purchase Price*" for the Purchased Assets will be equal to:

- (a) \$682,000 (the "*Initial Purchase Price*"); plus
- (b) any amounts due pursuant to the Earn-Out provisions under ARTICLE 10.

3.2 Allocation of Purchase Price.

Within 60 days following the Closing Date, Buyer and Seller Parties shall mutually agree in writing to a proposed schedule (the "*Proposed Allocation Schedule*"), allocating the Purchase Price (including, for purposes of this Section 3.2, the Assumed Liabilities). Within 30 days following the completion of the Earn-Out Period, Buyer and Seller Parties shall mutually agree in writing to a final schedule (the "*Final Allocation Schedule*"), allocating the payment of the Earn-Out, if any (including, for purposes of this Section 3.2, the Assumed Liabilities). Such schedules will be prepared in accordance with Code §1060 and the regulations thereunder.

ARTICLE 4. CLOSING

4.1 The Closing.

The closing of the Transactions (the "*Closing*") will take place as of 11:59 p.m. (CMT) by the exchange of documents and instruments by mail, courier, telecopy, or wire transfer to the extent mutually acceptable to the parties on such date as Buyer and Seller Parties may mutually determine (the "*Closing Date*").

4.2 Deliveries at the Closing.

At the Closing:

- (a) Seller Parties will deliver to Buyer:
 - (i) The Bill of Sale, the Transition Services Agreement, and the Joint Marketing Agreement, each duly executed by Seller and Parent, as appropriate.
 - (ii) Such other bills of sale, assignments, and other instruments of transfer or conveyance as Buyer may reasonably request or as may be otherwise necessary to evidence and effect the sale, assignment, transfer, conveyance, and delivery of the Purchased Assets to Buyer.

(iii) An Officers' Certificate, substantially in the form of Exhibit D, duly executed on behalf of Seller and Parent, as to whether each condition specified in Sections 8.1(a) and 8.1(b) has been satisfied in all respects.

(iv) A Secretary's certificate for Seller and Parent, substantially in the form of Exhibit E, duly executed on behalf of Seller and Parent.

(b) Buyer will deliver the following to Seller Parties:

(i) \$682,000 by wire transfer of immediately available funds as set out in Schedule 4.2(b).

(ii) The Bill of Sale, the Transition Services Agreement, and the Joint Marketing Agreement, each duly executed by Buyer.

(iii) An Officers' Certificate, substantially in the form of Exhibit F, duly executed on Buyer's behalf, as to whether each condition specified in Sections 8.2(a) and 8.2(b) has been satisfied in all respects.

(iv) A Secretary's certificate, substantially in the form of Exhibit G, duly executed on Buyer's behalf.

(v) All Offer and Notice letters executed by the Hired Employees.

(vi) Such other bills of sale, assignments, and other instruments of transfer or conveyance as Seller Parties may reasonably request or as may be otherwise necessary to evidence and effect the assumption by and the sale, assignment, transfer, conveyance, and delivery of the Purchased Assets to Buyer.

ARTICLE 5. REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller Parties that the statements contained in this ARTICLE 5 are correct and complete as of the Closing Date except as set forth in the Schedules Buyer has delivered to Seller Parties on the Closing Date.

5.1 Organization of Buyer.

Buyer is an entity duly organized, validly existing, and in good standing under the Laws of the State of Delaware. Buyer is duly authorized to conduct its business and is in good standing under the laws of each jurisdiction where such qualification is required. Seller has the requisite power and authority necessary to own or lease its properties and to carry on its businesses as currently conducted.

5.2 Authority of Buyer; Enforceability.

Buyer has the relevant entity power and authority necessary to execute and deliver each Transaction Document to which it is a party and to perform and consummate the Transactions contemplated by this Agreement. Buyer has taken all action necessary to authorize the execution and delivery of each Transaction Document to which Buyer is a party, the performance of its

obligations thereunder, and the consummation of the Transactions. Each Transaction Document to which Buyer is a party has been duly authorized, executed, and delivered by, and is Enforceable against, Buyer.

5.3 No Violation.

Except as listed on Schedule 5.3, the execution and the delivery of the Transaction Documents to which Buyer is a party by Buyer and the performance of the Transactions by Buyer will not (a) Breach any Law or Order to which Buyer is subject or any provision of Buyer's Organizational Documents; (b) Breach any Contract, Order, or Permit to which Buyer is a party or by which it is bound or to which any of the Purchased Assets are subject (or result in the imposition of any Encumbrance upon the Purchased Assets); or (c) require any consent.

5.4 Brokers' Fees.

Buyer has no Liability to pay any compensation to any broker, finder, or agent with respect to the Transactions for which Seller Parties could become directly or indirectly liable.

ARTICLE 6. REPRESENTATIONS AND WARRANTIES BY SELLER PARTIES

Seller Parties represent and warrant to Buyer that the statements contained in this ARTICLE 6 are correct and complete as of the Closing Date, except as set forth in the Schedules Seller Parties have delivered to Buyer on the Closing Date.

6.1 Entity Status.

Each Seller Party is an entity duly organized, validly existing, and in good standing under the Laws of the State of Delaware. Parent is duly authorized to conduct the Business and is in good standing under the laws of each jurisdiction in which the location of the Purchased Assets or the operation of the Business makes such qualification necessary. Each Seller Party has the requisite power and authority necessary to own or lease its properties used in the Business and to carry on the Business.

6.2 Power and Authority; Enforceability.

Each Seller Party has the relevant entity power and authority necessary to execute and deliver each Transaction Document to which it is a party and to perform and consummate the Transactions. Each Seller Party has taken all action necessary to authorize the execution and delivery of each Transaction Document to which it is a party, the performance of its respective obligations thereunder, and the consummation of the Transactions. Each Transaction Document to which Seller Parties, as appropriate, are parties has been duly authorized, executed, and delivered by, and is Enforceable against such Seller Party.

6.3 No Violation.

Except as listed on Schedule 6.3, the execution and the delivery of the applicable Transaction Documents by Seller Parties and the performance of the Transactions by Seller Parties will not (a) Breach any Law or Order to which Seller Parties are subject or any provision of the Organizational Documents of either Seller Party; (b) Breach any Contract, Order, or

Permit to which either Seller Party is a party or by which it is bound or to which any of the Purchased Assets are subject (or result in the imposition of any Encumbrance upon the Purchased Assets); or (c) require any consent.

6.4 Brokers' Fees.

Neither Seller Party has any Liability to pay any compensation to any broker, finder, or agent with respect to the Transactions for which Buyer could become directly or indirectly liable.

6.5 Subsidiary.

Seller is a wholly owned Subsidiary of Parent.

6.6 No Undisclosed Liabilities.

With respect to the Purchased Assets, neither Seller Party, to its Knowledge, has any Liability and there is no Basis for any present or future Action or Order against either Seller Party giving rise to any Liability, except for Liabilities listed on Schedule 6.6.

6.7 Legal Compliance.

Seller Parties have complied with all applicable Laws in conducting the Business, except where noncompliance with such Laws could not reasonably be expected to have a Material Adverse Effect on Seller Parties, collectively, or the Purchased Assets, and no Action or Threatened Action is pending against them alleging any failure to so comply.

6.8 Availability, Title to, and Condition of Purchased Assets.

Except for the assets listed on Schedule 6.8(a) (the "*Excluded Assets*"), the Purchased Assets constitute all the assets necessary for the conduct of the Business as presently conducted and as would be conducted in regards to the proposals listed on Schedule 6.8(b). Seller Parties have good, marketable, and indefeasible title to, or a valid leasehold interest in, all of the Purchased Assets, in each case free and clear of all Encumbrances, except for (i) any lien for current Taxes not yet due and payable, and (ii) liens set forth on Schedule 6.8(c) (collectively, "*Permitted Encumbrances*"). Solely for the purposes of any Contracts assigned pursuant to the Bill of Sale, Seller Parties are selling substantially all of the assets of Seller.

6.9 Intellectual Property.

(a) Schedule 6.9(a) contains the Patent number and Patent title of each Patent owned and used for License by Seller Parties and material to the operation of the Purchased Assets (as used by Seller Parties in the operation of the Business immediately prior to the Closing Date). All Patents required to be listed that have been registered with the United States Patent and Trademark Office or with a corresponding state office are currently in compliance with all formal legal requirements, to the Knowledge of Seller Parties are valid and Enforceable, and are not subject to any maintenance fees or Taxes or Actions falling due within 90 days after the Closing Date. No Patent required to be listed on Schedule 6.9(a) has been or is now involved in any opposition, invalidation, or cancellation and no such Action is Threatened with respect to any such Patent. All

products and materials containing such a Patent bear the proper legal notice where permitted by Law.

(b) Schedule 6.9(b) lists each Mark used by Seller Parties and material to the operation of the Purchased Assets (as used by Seller Parties in the operation of the Business immediately prior to the Closing Date). All Marks required to be listed that have been registered with the United States Patent and Trademark Office or with a corresponding state office are currently in compliance with all formal legal requirements (including the timely post-registration filing of affidavits of use and incontestability and renewal applications), to the Knowledge of Seller Parties are valid and Enforceable, and are not subject to any maintenance fees or Taxes or Actions falling due within 90 days after the Closing Date. No Mark required to be listed on Schedule 6.9(b) has been or is now involved in any opposition, invalidation, or cancellation and no such Action is Threatened with respect to any such Mark. All products and materials containing such a Mark bear the proper legal notice where permitted by Law.

(c) Schedule 6.9(c) lists each Copyright used by Seller Parties and material to the operation of the Purchased Assets (as used by Seller Parties in the operation of the Business immediately prior to the Closing Date). All Copyrights required to be listed on Schedule 6.9(c) that have been registered are currently in compliance with formal legal requirements, to the Knowledge of Seller Parties, are valid and Enforceable, and are not subject to any maintenance fees or Taxes or Actions falling due within 90 days after the Closing Date. All works encompassed by such Copyrights have been marked with the proper copyright notices.

(d) Schedule 6.9(d)(1) lists all Software developed by or used by Seller Parties and material to the operation of the Purchased Assets (as used by Seller Parties in the operation of the Business immediately prior to the Closing Date), excluding any operating system, off-the-shelf or "shrinkwrapped" software. Schedule 6.9(d)(2) lists all originators, developers or programmers (other than employees), contractors, or agents, who have written any material portion of or materially contributed to any development of such Software (collectively, the "**Developers**"). Schedule 6.9(d)(3) contains a materially complete and accurate list of all code incorporated into such Software that was not specifically written or developed for use in such Software (the "**Preexisting Code**"). This list includes code from toolkits, from preexisting code written by the Developers and/or from third-party software used to write or otherwise contribute to the development of any such Software. After Closing, Buyer will have at least a non-exclusive right to use any such Preexisting Code and, to the Knowledge of Seller Parties, there are no third-party rights to such Preexisting Code that will materially interfere with Buyer's ownership and use of such Software.

(e) Schedule 6.9(e) describes generally each Trade Secret used by Seller Parties and material to the operation of the Purchased Assets (as used by Seller Parties in the operation of the Business immediately prior to the Closing Date). With respect to each Trade Secret required to be listed, the documentation relating to such Trade Secret is sufficient in detail and content to identify and explain it and to allow its full and proper use by someone experienced in the field without reliance on any individual's knowledge or memory. Seller Parties has taken all reasonable precautions to protect such Trade Secret's secrecy, confidentiality, and value. To the Knowledge of Seller Parties, no

Trade Secret required to be listed is part of the public knowledge or literature or, has been used, divulged, or appropriated either for the benefit of any third person or to Seller Parties' detriment. No Trade Secret required to be listed is subject to any adverse claim nor has any adverse claim been Threatened with respect to any such Trade Secret and, to the Knowledge of Seller Parties, there is no Basis therefore.

(f) To the Knowledge of Seller Parties, Seller Parties own or have the right to use pursuant to an Enforceable Contract all Intellectual Property necessary to operate the Purchased Assets (as used by Seller Parties in the operation of the Business immediately prior to the Closing Date). Seller Parties have taken all reasonably necessary action to maintain and protect each item of Intellectual Property that they own or use in the operation of the Purchased Assets (as used by Seller Parties in the operation of the Business immediately prior to the Closing Date).

(g) Except as set forth on Schedule 6.9(g), Seller Parties have delivered to Buyer correct and complete copies of all written documentation evidencing ownership and prosecution (if applicable) of each item of Intellectual Property owned by Seller Parties used by Seller Parties in the operation of the Purchased Assets (as used by Seller Parties in the operation of the Business immediately prior to the Closing Date). With respect to each item of Intellectual Property:

(i) Seller Parties possess all right, title, and interest in and to the item, free and clear of any Encumbrance, except Permitted Encumbrances;

(ii) the item is not subject to any outstanding Order;

(iii) no Action is pending or Threatened which challenges the Enforceability, use, or ownership of the item; and

(iv) Except for the Contracts assigned pursuant to the Bill of Sale, neither Seller Party has ever agreed to indemnify any person for or against any interference, infringement, misappropriation, or other conflict with respect to the item.

(h) Except as listed on Schedule 6.9(h)(1), to the Knowledge of Seller Parties and relating to the Purchased Assets (as used by Seller Parties in the operation of the Business immediately prior to the Closing Date), neither Seller Party has interfered with, infringed upon, or misappropriated any other person's Intellectual Property, and neither Seller Party has ever received any notice alleging any such interference, infringement, misappropriation, violation or conflict (including any claim that a Seller Party must license or refrain from using any other person's Intellectual Property). To the Knowledge of Seller Parties, no third Person has any Intellectual Property that interferes or would be likely to interfere with Buyer's use of any of its Intellectual Property as it relates to the Purchased Assets (as used by Seller Parties in the operation of the Business immediately prior to the Closing Date). To the Knowledge of Seller Parties and relating to the Purchased Assets, Buyer will not interfere with, infringe upon, or misappropriate any Intellectual Property rights of any other Person as a result of the continued operation of the Purchased Assets as currently conducted. Except as listed on Schedule 6.9(h)(2), to the Knowledge of Seller Parties, no other Person has interfered with, infringed upon,

misappropriated, or otherwise come into conflict with the Intellectual Property included within the Purchased Assets.

(i) Schedule 6.9(i)(1) identifies each item of Intellectual Property, other than readily available Software available on a retail basis having a replacement value of less than \$1,000.00 per copy (excluding any operating system, off-the-shelf or "shrinkwrapped" software), that any other Person owns or has rights to and that Seller Party uses and is material to the operation of the Purchased Assets (as used by Seller Parties in the operation of the Business immediately prior to the Closing Date). Schedule 6.9(i)(2) identifies each Contract pursuant to which Seller Parties have granted to any Person rights under or with respect to any of its Intellectual Property included within the Purchased Assets (together with any exceptions). Seller has made available to Buyer correct and complete copies of all Contracts with respect to such use as amended to date. With respect to each item of Intellectual Property required to be listed on Schedule 6.9(i), excluding each item of computer software available on a retail basis having a retail basis of less than \$1,000.00:

(i) except as otherwise disclosed in the Schedules, the Contract is Enforceable;

(ii) except for issues relating to Buyer's performance or non-performance of its obligations and as otherwise disclosed in the Schedules, the Contract will be Enforceable on identical terms immediately following the consummation of the Transactions;

(iii) to Knowledge of Seller Parties, no counter-party is in breach of such Contract, and no event has occurred which with notice or lapse of time would constitute a breach thereunder;

(iv) no party to the Contract has repudiated any provision thereof;

(v) with respect to each sublicense Contract, to Seller's Knowledge, the representations and warranties set forth in Section 6.9(i)(i) – 6.9(i)(iv) are true and correct with respect to the underlying license Contract;

(vi) the underlying item of Intellectual Property is not subject to any outstanding Order;

(vii) no Action is pending or Threatened which challenges the Enforceability of the underlying item of Intellectual Property; and

(viii) Seller Parties have not granted any sublicense or similar Contract with respect to such Contract.

(j) Except as set forth on Schedule 6.9(j), all current employees and, to the Knowledge of Seller Parties, former employees, of Seller Parties have executed written Contracts with such Seller Party that assign to such Seller Party all rights to any inventions, improvements, discoveries, or information relating to the Purchased Assets. No employee of either Seller Party has entered into any Contract that restricts or limits in any way the scope or type of work in which the employee may be engaged or requires the

employee to transfer, assign, or disclose information concerning his work or her work to any person other than Seller Parties.

6.10 Contracts.

Except as otherwise disclosed in Schedule 6.9, Schedule 6.10 lists the following Contracts to which Seller Parties are a party (but only, in each case, in the event the Contract relates to the Business or any of the Purchased Assets):

(a) Any Contract (or group of related Contracts) for the lease of personal property to or from any Person providing for lease payments in excess of \$50,000 per annum.

(b) Any Contract (or group of related Contracts) for the purchase or sale of raw materials, commodities, supplies, products, or other personal property, or for the furnishing or receipt of services, the performance of which will extend over a period of more than one year, result in a loss to either Seller Party, or involve consideration in excess of \$50,000.

(c) Any Contract concerning a limited liability company, partnership, joint venture or similar arrangement.

(d) Any Contract (or group of related Contracts) under which either Seller Party has created, incurred, assumed, or guaranteed any Liability for borrowed money or any capitalized lease in excess of \$75,000.

(e) Any Contract concerning confidentiality or noncompetition.

(f) Any Contract with any Affiliate of Seller.

(g) Any collective bargaining Contract.

(h) Any Contract for the employment of any individual on a full-time, part-time, consulting, or other basis providing annual compensation in excess of \$60,000 or providing severance benefits.

Seller Parties have delivered to Buyer a correct and complete copy of each written Contract (as amended to date) listed in Schedule 6.10 and a written summary setting forth the terms and conditions of each oral Contract referred to in Schedule 6.10. With respect to each such Contract:

(i) to the Knowledge of Seller Parties, the Contract is Enforceable in accordance with its terms;

(ii) to the Knowledge of Seller Parties, the Contract will continue to be Enforceable on identical terms following the consummation of the Transactions;

(iii) No Seller Party (and to the Knowledge of Seller Parties, no counter-party) is in Breach of such Contract, and to the Knowledge of Seller

Parties, no event has occurred that, with notice or lapse of time, would constitute a Breach under the Contract; and

(iv) no party to the Contract has repudiated any provision of the Contract.

6.11 Powers of Attorney.

There are no outstanding powers of attorney executed on behalf of Seller Parties related to the Business, the Purchased Assets, or the Assumed Liabilities.

6.12 Insurance.

Schedule 6.12 sets forth a list of each of the insurance policies of Seller Parties covering the Purchased Assets, the Business, and the operation thereof. All such insurance policies are valid and binding and in full force and effect as of the date hereof, all premiums due thereunder have been paid and neither Seller Party has received any notice of cancellation or termination in respect of any such policy or is in default thereunder in any material respect.

6.13 Litigation.

Schedule 6.13 sets forth each instance in which a Seller Party, in regards to the Purchased Assets and the Business, (a) is subject to any outstanding Order or (b) is a party, the subject of, or, to is Threatened to be made a party to or the subject of, any Action. As of the Closing Date, there is no Action which questions the Enforceability of this Agreement or the Transactions, or could result in any Material Adverse Change with respect to Seller Parties, collectively, and neither Seller Party has any Basis to believe that any such Action may be brought against a Seller Party.

6.14 Employees.

(a) Schedule 6.14 contains (i) a complete and accurate list of the following information for each employee of Seller Parties performing activities for the Business, including each employee on leave of absence or layoff status: employer; name; job title; date of hiring or engagement; date of commencement of employment or engagement; current compensation paid or payable and any change in compensation since October 1, 2002; sick and vacation leave that is accrued but unused; and service credited for purposes of vesting and eligibility to participate under any Employee Benefit Plan, or any other employee or director benefit plan (the "*Active Employees*"); and (ii) a complete and accurate list of each independent contractor, consultant and agent of Seller Parties performing activities for the Business.

(b) No Active Employee is bound by any Contract that purports to limit the ability of such officer, director, agent, employee, consultant, or contractor to engage in or continue or perform any conduct, activity, duties or practice relating to the operation of the Business or the Purchased Assets.

6.15 Employee Benefits.

Seller Parties will treat all Hired Employees as terminated for purposes of Employee Benefit Plans offered by Seller Parties. With respect to any kind of Employee Benefit Plan, to the Knowledge of Seller Parties, such plan has been funded and maintained in compliance with all Laws applicable thereto and the requirements of such plan's governing documents.

6.16 Customers and Suppliers.

Schedule 6.16 lists the Business's (a) current customers and states the approximate total sales by Seller Parties to each such customer during the previous twelve months and (b) ten largest suppliers during the previous twelve months. Except as set forth in Schedule 6.16, neither Seller Party has received notice of termination or an intention to terminate the relationship with such Seller from any customer or supplier.

6.17 Permits.

With respect to the operation of the Business and the Purchased Assets, Seller Parties possess all Permits listed on Schedule 6.17. Except as set forth in Schedule 6.17, with respect to each such Permit:

- (a) it is valid, subsisting and in full force and effect;
- (b) there are no violations of such Permit that would result in a termination of such Permit;
- (c) neither Seller Party has received notice that such Permit will not be renewed; and
- (d) the Transactions will not adversely affect the validity of such Permit or cause a cancellation of or otherwise adversely affect such Permit.

6.18 Solvency.

(a) Parent is not now insolvent, nor will Parent be rendered insolvent by the sale of the Purchased Assets. As used in this Section 6.18, "Liabilities" means those Liabilities of which the Chief Financial Officer has actual knowledge, and "insolvent" means that the sum of the Liabilities of Parent exceeds the fair present value of Parent's assets.

- (b) Immediately after giving effect to the consummation of the Transactions:
 - (i) Parent will be able to pay its Liabilities as they become due in the Ordinary Course of Business;
 - (ii) Parent will not have unreasonably small capital with which to conduct its present or proposed business;
 - (iii) Parent will have assets (calculated at fair market value) that exceed its Liabilities; and

(iv) Taking into account all pending and Threatened Actions, final judgments against Parent in Actions for money Damages are not reasonably anticipated to be rendered at a time when, or in amounts such that, Parent will be unable to satisfy any such judgments promptly in accordance with their terms (taking into account the maximum probable amount of such judgments in any such Actions and the earliest reasonable time at which such judgments might be rendered) as well as all other obligations of Parent.

ARTICLE 7. ADDITIONAL COVENANTS

The parties agree as follows:

7.1 General.

In case at any time after the Closing any further action is necessary to carry out the purposes of this Agreement, each party will take such further action (including executing and delivering such further instruments and documents) as any other party reasonably may request, all at the requesting party's sole cost and expense (unless the requesting party is entitled to indemnification therefor under ARTICLE 9). After the Closing Buyer will be entitled to possession of all documents, books, records, agreements, and financial data of any sort solely relating to the Purchased Assets.

7.2 Litigation Support.

So long as any party actively is contesting or defending against any Action in connection with (a) the Transactions or (b) any fact, situation, circumstance, status, condition, activity, practice, plan, occurrence, event, incident, action, failure to act, or transaction involving the Business or the Purchased Assets, each other party will reasonably cooperate with such party and such party's counsel in the contest or defense, make available their personnel, and provide such testimony and access to their books and records as will be necessary in connection with the contest or defense, at the sole cost and expense of the contesting or defending party (unless the contesting or defending party or one of its Affiliates is entitled to indemnification therefor under ARTICLE 9).

7.3 Transition.

Seller Parties will not take any action that is designed or intended to have the effect of discouraging any lessor, licensor, customer, supplier, or other business associate of Seller Parties, as it relates to the Business, from maintaining at least as favorable Business relationships with Buyer after the Closing as it maintained with Seller Parties prior to the Closing. Seller Parties will, and will cause their respective Affiliates to, refer all customer, supplier, and other inquiries relating to the Business to Buyer or an Affiliate thereof.

7.4 Confidentiality.

Each party will continue to abide by the Mutual Confidential Information Agreement entered into on October 7, 2002.

7.5 Restrictive Covenants.

To assure that Buyer will realize the benefits of the Transactions, Seller Parties, unless otherwise agreed to in writing by the Buyer, agree with Buyer not to:

(a) From the Closing Date until five years after the Closing Date (the "*Non-Compete Termination Date*") directly or indirectly, alone or as a partner, joint venturer, officer, director, member, employee, consultant, agent, independent contractor or Equity Interest holder of, or lender to, any Person or business, engage in the Business anywhere in the world.

(b) From the Closing Date until the Non-Compete Termination Date, directly or indirectly (i) induce any Person that is a customer of Buyer (or any of its Affiliates) or the Business as of Closing to enter into any Contract with any other Person or business that is directly or indirectly in competition with Buyer (or any of its Affiliates) in the conduct of the Business or the Business as of Closing; (ii) canvass, solicit, or accept services, like those provided by the Business, from any Person who is a customer of Buyer (or any of its Affiliates); or (iii) request or advise any Person who is a customer, vendor, or lessor of Buyer (or any of its Affiliates) or the Business as of Closing to withdraw, curtail, or cancel any such customer's, vendor's, or lessor's business with Buyer (or any of its Affiliates).

(c) From the Closing Date until the Non-Compete Termination Date, directly or indirectly, (i) solicit for employment or other similar relationship with Seller Parties (or any of their Affiliates), any employee or then currently active independent contractor of Buyer (or any of its Affiliates) or the Business as of Closing, or any person who was an employee or then currently active independent contractor of Buyer (or any of its Affiliates) or the Business as of Closing, or engaged in the Business within the twelve month period immediately preceding such solicitation of employment, other than such person (A) whose employment or independent contractor relationship was terminated by the applicable Person, or (B) who independently responded to a general solicitation for employment by such Seller Party or such Seller Parties' Affiliate, or (ii) induce or attempt to induce, any employee or independent contractor of Buyer (or any of its Affiliates) or the Business as of Closing, to terminate such employee's employment or independent contractor's active contractual relationship with such Person.

Notwithstanding the foregoing, the beneficial ownership of less than 5% of the Equity Interests of any Person having a class of Equity Interest actively traded on a national securities exchange or over-the-counter market will not be deemed, in and of itself, to Breach the prohibitions of this Section 7.5. Seller Parties agree and acknowledge that the restrictions in this Section 7.5 are reasonable in scope and duration and are necessary to protect Buyer after the Closing. If any provision of this Section 7.5, as applied to any party or to any circumstance, is adjudged by a Governmental Body, arbitrator, or mediator not to be enforceable in accordance with its terms, the same will in no way affect any other circumstance or the enforceability of the remainder of this Agreement. If any such provision, or any part thereof, is held not to be enforceable in accordance with its terms because of the duration of such provision, the area covered thereby, or the scope of the activities covered, the parties agree that the Governmental Body, arbitrator, or mediator making such determination will have the power to reduce the duration, area, and/or scope of activities of such provision, and/or to delete specific words or phrases, and in its

reduced form, such provision will then be enforceable in accordance with its terms and will be enforced. The parties agree and acknowledge that the Breach of this Section 7.5 will cause irreparable Damage to Buyer and upon Breach of any provision of this Section 7.5, Buyer will be entitled to injunctive relief, specific performance, or other equitable relief without bond or other security; provided, however, that the foregoing remedies will in no way limit any other remedies which Buyer may have.

7.6 Taxes.

(a) The Seller will be Liable for and will pay all Taxes (whether assessed or unassessed) applicable to the Business and the Purchased Assets, in each case attributable to periods (or portions thereof) ending on or prior to the Closing Date. Buyer will be Liable for and will pay all Taxes (whether assessed or unassessed) applicable to the Business and the Purchased Assets, in each case attributable to periods (or portions thereof) beginning after the Closing Date. For purposes of this Section 7.6(a), any period beginning before and ending after the Closing Date will be treated as two partial periods, one ending on the Closing Date and the other beginning on the date immediately following the Closing Date, except that Taxes (such as property Taxes) imposed on a periodic basis will be allocated on a daily basis.

(b) Notwithstanding Section 7.6(a), any sales Tax, use Tax, real property transfer or gains Tax, documentary stamp Tax, or similar Tax attributable to the sale or transfer of the Purchased Assets will be borne one-half by Seller Parties and one-half by Buyer. Seller shall prepare and file all Tax Returns in connection with such sales or transfer Taxes and shall provide Buyer with copies thereof at least five business days before they are due to be filed. Buyer agrees to timely sign and deliver such certificates or forms as may be necessary or appropriate to make a report with respect to any such Taxes.

(c) Seller Parties, on the one hand, and Buyer, on the other hand, will provide reimbursement within 15 days of notice of a claim for reimbursement for any Tax paid by one party all or a portion of which is the responsibility of the other party in accordance with the terms of this Section 7.6.

(d) Any payments made pursuant to this Section 7.6 will be treated by Buyer and Seller Parties as an adjustment to the Purchase Price.

(e) Seller will promptly after the Closing prepare and file all Tax Returns and other reports required by Law, relating to the operation of the Business prior to the Closing Date.

7.7 Employees and Employee Benefit Plans.

(a) Employment of Active Employees by Buyer.

(i) Buyer is not obligated to hire any Active Employee but may interview all Active Employees. With the written consent of an Active Employee and to the extent permitted by applicable law, Seller Parties will provide Buyer with reasonable access to Seller Parties' facilities and personnel records (including performance appraisals, disciplinary actions, and grievances records)

for the purpose of preparing for and conducting employment interviews with such Active Employee. Access will be provided by Seller Parties upon reasonable prior notice during normal business hours. Schedule 7.7(a) lists those Active Employees Buyer intends to make offers of employment contingent upon the Closing; such offers of employment shall also require such Active Employees to resign their employment with the appropriate Seller Party as a condition precedent for employment with Buyer.

(ii) It is understood and agreed that (A) Buyer's expressed intention to extend offers of employment as set forth in this section will not constitute any commitment, Contract or understanding (expressed or implied) of any obligation on the part of Buyer to a post-Closing employment relationship of any fixed term or duration or upon any terms or conditions other than those that Buyer may establish pursuant to individual offers of employment, and (B) employment offered by Buyer is "at will" and may be terminated by Buyer or by an employee at any time for any reason. Nothing in this Agreement will be deemed to prevent or restrict in any way the right of Buyer to terminate, reassign, promote or demote any of the Hired Employees after the Closing or to change adversely or favorably the title, powers, duties, responsibilities, functions, locations, salaries, other compensation or terms or conditions of employment of such employees.

(b) Salaries and Benefits.

(i) Seller Parties will be responsible for (A) the payment of all wages and other remuneration due to Active Employees with respect to their services as employees of Seller Parties through the close of business on the Closing Date, including *pro rata* bonus payments and all vacation pay earned prior to the Closing Date; (B) the payment of any termination or severance payments and the provision of health plan continuation coverage in accordance with the requirements of Sections 601 through 608 of ERISA; and (C) any and all payments to employees required under the Worker Adjustment and Retraining Notification Act or any similar state or local Law, if any.

(ii) Seller Parties will be liable for any claims made or incurred by Active Employees and their beneficiaries through the Closing Date under the Employee Benefit Plans. For purposes of the immediately preceding sentence, a charge will be deemed incurred, in the case of hospital, medical or dental benefits when the services that are the subject of the charge are performed and, in the case of other benefits (such as disability or life insurance), when an event has occurred or when a condition has been diagnosed that entitles the employee to the benefit.

(c) General Employee Provisions.

(i) Buyer will not have any Liability or obligation, whether to Hired Employees, former employees, their beneficiaries or any other Person, with respect to any Employee Benefit Plans, practices, programs or arrangements (including the establishment, operation or termination thereof and the notification and provision of COBRA coverage extension) maintained by Seller Parties.

(ii) Buyer will offer and provide group health plan coverage under one of the group health plans of Buyer or an Affiliate of Buyer upon the employment of any Hired Employees on the same terms as any other newly hired employees of Buyer.

7.8 Payment of Assumed Liabilities.

Buyer hereby agrees to pay, discharge, fulfill, perform or otherwise satisfy the Assumed Liabilities in accordance with their respective terms or upon such other terms as are acceptable to the obligor.

7.9 Payment of Non-Assumed Liabilities.

Seller Parties hereby agree to pay or make adequate provision for the payment of Liabilities of Seller Parties, that are not Assumed Liabilities, where the failure to do so would materially impair Buyer's use or enjoyment of the Purchased Assets. If the Liabilities of Seller Parties that are not Assumed Liabilities are not paid or adequate provision for payment is not made, and Buyer reasonably determines that failure to make such payments will impair Buyer's use or enjoyment of the Purchased Assets or conduct the Business, Buyer may, at any time after the Closing, elect to pay such Liabilities directly (but will have no obligation to do so) and treat such payment as Damages under this Agreement so that Buyer will be entitled to exercise the remedies available to it under ARTICLE 9 of this Agreement (without regard to the limitations in Section 9.5(a)).

7.10 American Consulting Corporation.

Parent covenants that it will not materially default on any payment obligations it may have pursuant to any valid and timely and otherwise properly executed option issued to American Consulting Corporation.

ARTICLE 8. CLOSING CONDITIONS

8.1 Conditions Precedent to Obligations of Buyer.

Buyer's obligation to consummate the purchase of the Purchased Assets and the Transactions is subject to the satisfaction of each condition precedent listed below.

(a) **Accuracy of Representations and Warranties.** Each representation and warranty set forth in ARTICLE 6 must have been accurate and complete in all material respects (except with respect to any provisions including the word "material" or words of similar import, with respect to which such representations and warranties must have been accurate and complete) as of the Closing Date.

(b) **Compliance with Obligations.** Seller Parties must have performed and complied with all its covenants and obligations required by this Agreement to be performed or complied with at or prior to Closing (singularly and in the aggregate) in all material respects.

(c) **No Adverse Litigation.** There must not be pending or Threatened any Action by or before any Governmental Body, arbitrator, or mediator which seeks to restrain, prohibit, invalidate, or collect Damages arising out of the Transactions, or which, in the reasonable judgment of Buyer, makes it inadvisable to proceed with the Transactions.

(d) **Consents.** Seller Parties and Buyer must have received consents to the Transactions and waivers of rights to terminate or modify any rights or obligations of the Seller from any Person (i) from whom such consent is required under any Contract listed in Schedules 5.3 and 6.3, or (ii) who, as a result of the Transactions, would have such rights to terminate or modify such Contracts, either by their terms or as a matter of Law, except as otherwise disclosed in the Schedules (the "*Required Consents*").

(e) **Release of Encumbrances.** There must have been received by Seller Parties and Buyer releases of all Encumbrances on the Purchased Assets, other than Permitted Encumbrances.

8.2 Conditions Precedent to Obligations of Seller Parties.

Seller Parties' obligation to consummate the sale of the Purchase Assets and the Transactions is subject to the satisfaction of each condition precedent listed below.

(a) **Accuracy of Representations and Warranties.** Each representation and warranty set forth in ARTICLE 5 must have been accurate and complete in all material respects (except with respect to any provisions including the word "material" or words of similar import, with respect to which such representations and warranties must have been accurate and complete) as of the Closing Date.

(b) **Compliance with Obligations.** Buyer must have performed and complied with all its covenants and obligations required by this Agreement to be performed or complied with at or prior to Closing (singularly and in the aggregate) in all material respects.

(c) **Consents.** Seller Parties and Buyer must have received the Required Consents.

(d) **Release of Encumbrances.** There must have been received by Seller Parties and Buyer releases of all Encumbrances on the Purchased Assets, other than Permitted Encumbrances.

(e) **No Order or Injunction.** There must not be issued and in effect any Order restraining or prohibiting the Transactions.

ARTICLE 9. INDEMNIFICATION

9.1 Survival of Representations and Warranties.

(a) Each representation and warranty of Seller Parties contained in ARTICLE 6 and any certificate related to such representations and warranties will survive the

Closing (unless the Indemnified Party had actual knowledge of the Breach by the Indemnitor prior to the time of Closing, and as to which Buyer had Knowledge or any Basis to believe that the existence of such Breach would result in a Material Adverse Effect on the Purchased Assets or the Business, in which event the affected representation(s) and warranty(ies) or relevant portions thereof, shall not survive Closing) and continue in full force and effect for two years thereafter, except (i) the representations and warranties set forth in Sections 6.4 and 6.8, which will survive the Closing and continue in full force and effect until the applicable statute of limitations expires (or for seven years if there is no applicable statute of limitations) and (ii) the representations and warranties set forth in Sections 6.1 and 6.2, which will survive the Closing and will continue in full force and effect forever.

(b) Each representation and warranty of Buyer contained in ARTICLE 5 and any certificate related to such representations and warranties will survive the Closing (unless the Indemnified Party had actual knowledge of the Breach by the Indemnitor prior to the time of Closing, and as to which a Seller Party had Knowledge or any Basis to believe that the existence of such Breach would result in a Material Adverse Effect on the Transactions, in which event the affected representation(s) and warranty(ies) or relevant portions thereof, shall not survive Closing) and continue in full force and effect for two years thereafter.

(c) Each covenant contained in ARTICLE 7 or any certificate or document delivered pursuant hereto will survive for the relevant statute of limitations period (or for five years if there is no applicable statute of limitations), unless a different period for performance is expressly contemplated herein or thereby.

9.2 Indemnification Provisions for Buyer's Benefit.

Seller Parties will indemnify and hold Indemnified Buyer Parties harmless from and pay any and all Damages, directly or indirectly, resulting from, relating to, arising out of, or attributable to any one of the following:

(a) Any Breach of any representation or warranty any Seller Party has made in this Agreement.

(b) Any Breach by any Seller Party of any covenant or obligation of such Seller Party in this Agreement.

(c) Any event arising from the operation or ownership of, or conditions occurring with respect to any of the Purchased Assets prior to 11:59 p.m. (CMT) on the Closing Date.

9.3 Indemnification Provisions for Seller's Benefit.

Buyer will indemnify and hold the Indemnified Seller Parties harmless from and pay any and all Damages, directly or indirectly, resulting from, relating to, arising out of, or attributable to any of the following:

(a) Any Breach of any representation or warranty Buyer has made in this Agreement.

(b) Any Breach by Buyer of any covenant or obligation of Buyer in this Agreement.

(c) Any event arising from the operation and ownership of, or conditions first occurring with respect to any of the Purchased Assets after 11:59 p.m. (CMT) on the Closing Date.

9.4 Indemnification Claim Procedures.

(a) If any Action is commenced in which any Indemnified Party is a party that may give rise to a claim for indemnification against any Indemnitor (an "*Indemnification Claim*") then such Indemnified Party will promptly give notice to the Indemnitor. Failure to notify the Indemnitor will not relieve the Indemnitor of any Liability that it may have to the Indemnified Party, except to the extent the defense of such Action is materially and irrevocably prejudiced by the Indemnified Party's failure to give such notice. If an Indemnification Claim does not involve an Action against or by a third party the Indemnified Party will promptly give notice of the facts underlying the claim for indemnification.

(b) An Indemnitor will have the right to defend against an Indemnification Claim with counsel of its choice reasonably satisfactory to the Indemnified Party if (i) within 15 days following the receipt of notice of the Indemnification Claim the Indemnitor notifies the Indemnified Party in writing that the Indemnitor will indemnify the Indemnified Party from and against the entirety of any Damages the Indemnified Party may suffer resulting from, relating to, arising out of, or attributable to the Indemnification Claim, (ii) the Indemnitor provides the Indemnified Party with evidence reasonably acceptable to the Indemnified Party that the Indemnitor will have the financial resources to defend against the Indemnification Claim and pay, in cash, all Damages the Indemnified Party may suffer resulting from, relating to, arising out of, or attributable to the Indemnification Claim, (iii) the Indemnification Claim involves only money Damages and does not seek an injunction or other equitable relief, (iv) settlement of, or an adverse judgment with respect to, the Indemnification Claim is not in the good faith judgment of the Indemnified Party likely to establish a precedential custom or practice materially adverse to the continuing business interests of the Indemnified Party, and (v) the Indemnitor continuously conducts the defense of the Indemnification Claim actively and diligently.

(c) So long as the Indemnitor is conducting the defense of the Indemnification Claim in accordance with Section 9.4(b), (i) the Indemnified Party may retain separate co-counsel at its sole cost and expense and participate in the defense of the Indemnification Claim, (ii) the Indemnified Party will not consent to the entry of any Order with respect to the Indemnification Claim without the prior written consent of the Indemnitor (not to be withheld unreasonably), and (iii) the Indemnitor will not consent to the entry of any Order with respect to the Indemnification Claim without the prior written consent of the Indemnified Party (not to be withheld unreasonably, provided that it will not be deemed to be unreasonable for an Indemnified Party to withhold its consent (A) with respect to any finding of or admission (1) of any Breach of any Law, Order or Permit, (2) of any violation of the rights of any Person, or (3) which Indemnified Party believes could have a Material Adverse Effect on any other Actions to which the

Indemnified Party or its Affiliates are party or to which Indemnified Party has a good faith belief it may become party, or (B) if any portion of such Order concerning the Indemnified Party's confidential Intellectual Property would not remain sealed).

(d) If any condition in Section 9.4(b) is or becomes unsatisfied, (i) the Indemnified Party may defend against, and consent to the entry of any Order with respect to an Indemnification Claim with the prior written consent of the Indemnitor (not to be withheld unreasonably, provided that it will not be deemed to be unreasonable for an Indemnitor to withhold its consent (A) with respect to any finding of or admission (1) of any Breach of any Law, Order or Permit, (2) of any violation of the rights of any Person, or (3) which Indemnitor believes could have a Material Adverse Effect on any other Actions to which the Indemnitor or its Affiliates are party or to which Indemnitor has a good faith belief it may become party, or (B) if any portion of such Order concerning the Indemnitor's confidential Intellectual Property would not remain sealed), (ii) each Indemnitor will jointly and severally be obligated to reimburse the Indemnified Party promptly and periodically for the Damages relating to defending against the Indemnification Claim, and (iii) each Indemnitor will remain jointly and severally liable for any Damages the Indemnified Party may suffer relating to the Indemnification Claim to the fullest extent provided in this ARTICLE 9.

9.5 Limitations on Indemnification Liability.

(a) **With Respect to Claims by the Indemnified Buyer Parties.** Any claims the Indemnified Buyer Parties make under this ARTICLE 9 will be limited as follows:

(i) Ceiling. Seller Parties' aggregate Liability for money Damages under this Agreement related to Breaches of the representations, warranties, and covenants herein (the "***Seller Parties' Indemnification Ceiling***") will not exceed an amount equal to the Purchase Price less any damages or liabilities paid in connection with the Transition Services Agreement and subject to the terms thereof; provided, that the limitation contemplated hereby will not be applicable with respect to (A) Breaches of Sections 6.1 and 6.2, or (B) instances of fraud by a Seller Party.

(b) **With Respect to Claims by the Indemnified Seller Parties.** Any claims the Indemnified Seller Parties make under this ARTICLE 9 will be limited as follows:

(i) Ceiling. Buyer's aggregate Liability for money Damages under this Agreement related to Breaches of the representations, warranties, and covenants herein (the "***Buyer's Indemnification Ceiling***") will not exceed the Purchase Price less any damages or liabilities paid in connection with the Transition Services Agreement and subject to the terms thereof; provided, that the limitation contemplated hereby will not be applicable with respect to instances of fraud by Buyer.

(c) **With Respect to Claims by any Indemnified Party.** Any claims any Indemnified Party makes under this ARTICLE 9 will be limited as follows:

(i) Exclusion of Certain Types of Damages. All indemnification obligations will be limited to actual Damages and will exclude incidental, consequential, lost profits, indirect, punitive, or exemplary Damages.

(ii) Materiality Qualifiers. In determining whether a representation, warranty, or covenant in this Agreement has been breached where such representation, warranty, or covenant is modified by the words "material," "Material Adverse Effect," "Material Adverse Change," or other words of similar import, such words or cases will be deemed to refer to an event or status (or series of related events or status) causing Damages in excess of \$100,000 for each such event or status (or series of related events or status).

9.6 Indemnification if Negligence of Indemnatee; No Waiver of Rights or Remedies.

THE INDEMNIFICATION PROVIDED IN THIS ARTICLE 9 WILL BE APPLICABLE WHETHER OR NOT THE SOLE, JOINT, OR CONTRIBUTORY NEGLIGENCE OF THE INDEMNIFIED PARTY IS ALLEGED OR PROVEN. THE PARTIES AGREE THE PRECEDING SENTENCE IS COMMERCIALY CONSPICUOUS. Notwithstanding the foregoing, an Indemnified Party shall be required to promptly reimburse Indemnitor for any Damages paid by such Indemnitor to or on behalf of such Indemnified Party pursuant to this ARTICLE 9, in proportion to the extent that such Damages: (a) were not caused by a Breach by Seller Parties or (b) were attributable to the conduct of the Indemnified Party; in either case as determined by a final order from a court of competent jurisdiction. In addition, in any settlement of a claim that is subject to the defense or indemnification obligations of ARTICLE 9, the parties shall negotiate in good faith the appropriate apportionment of fault (and therefore, indemnification and defense liabilities) as contemplated by this Section 9.6.

9.7 Indemnification for Non-Compliance with Bulk Sales Statute.

Buyer acknowledges that Seller Parties may not comply with provisions of any bulk transfer laws of any jurisdiction in connection with the Transactions and to the extent applicable, Buyer hereby waives such compliance by Seller Parties. Seller Parties will indemnify Buyer for any Damages resulting from or relating to such non-compliance and Section 9.5 will not apply to Damages incurred as a result thereof.

9.8 Set Off Rights.

Upon notice to Seller Parties specifying in reasonable detail the basis therefor, Buyer may hold back any amount (provided amounts held back under this Section 9.8 do not in the aggregate exceed the Purchase Price) to which Buyer has made a good faith claim under this ARTICLE 9 against amounts otherwise payable by Buyer pursuant to ARTICLE 10. If any such claim is resolved in favor of Buyer, in accordance with the terms of this Agreement, Buyer shall be entitled to set off the amount of such claim against amounts otherwise payable by Buyer pursuant to ARTICLE 10. Promptly upon resolution of any such claim asserted pursuant to ARTICLE 9, Buyer will promptly release and pay to Seller Parties any remaining amounts not set off under the previous sentence. Neither the exercise of nor the failure to exercise such right

of set off will constitute an election of remedies or limit Buyer in any manner in the enforcement of any other remedies available to it.

ARTICLE 10. EARN OUT

10.1 Earn-Out Consideration.

(a) In addition to the Initial Purchase Price, revenue sharing consideration will be paid for sales to certain named investors (the "*Earn-Out*"), pursuant to the following terms and conditions:

- (i) The Earn-Out will be based upon the number of "*Qualified TMS Categories*" purchased during the period between the Closing Date and 11:59 p.m. (CMT) December 31, 2003 (the "*Earn-Out Period*"), by:
 - a. A company, and its Subsidiaries or other operating entities, represented on Parent's Board of Directors as of the date of this Agreement, constituting, The Coca Cola Company; Colgate-Palmolive Company; Kraft Foods, Inc.; McCormick & Company, Inc.; PepsiCo, Inc.; The Procter & Gamble Company; Sara Lee Corporation; and Unilever, NV; or
 - b. ConAgra, Inc., H.J. Heinz Company, Hershey Foods Corporation, Johnson & Johnson, Reckitt Benckiser PLC, The Gillette Company or Wm. Wrigley Jr. Company; provided, that Buyer has requested in writing (or by email) the assistance of the current or future Chief Executive Officer of Parent with the applicable customer to provide referrals, participate in sales meetings, or provide such other assistance in closing such accounts as Buyer and Parent mutually agree is reasonable; provided, further, that the current or future Chief Executive Officer of Parent has agreed in writing (or by email) to provide mutually agreeable assistance with respect to such named customer.
- (ii) The "*Qualified TMS Categories*" are consumer packaged goods product categories that are purchased at values equal to or greater than \$200,000 per annum. Attached as Schedule 10.1(b)(ii) is a list of the product categories which Seller Parties currently contemplate offering, and the current projected value of each such category, which list Buyer may from time to time revise; provided, that Buyer seeks in good faith to maximize the revenue from each category sale; provided, further, that Parent consents, in writing, to any such revisions. In addition, the sale of multiple categories of other services to an otherwise eligible company that in the aggregate is equal to or greater than \$200,000 in value or revenue to Buyer will be deemed to satisfy the "*Qualified TMS Category*" requirement.

- (iii) Buyer will pay Parent 50% of the contracted, non-refundable (other than for performance-related reasons) revenue that is recognized, in accordance with GAAP and consistent with past practices, by Buyer for contracts to purchase Qualified TMS Categories that are executed during the Earn-Out Period, the amount of such payments to Seller Parties not to exceed \$4 million (representing a total maximum of \$8 million of qualified revenue recognized by Buyer).
- (iv) The Earn-Out will be paid in cash to Seller Parties in two installments: (A) any Earn-Out payment(s) for the first six month period following the Closing Date shall be paid no later than 30 days following the six month anniversary of the Closing Date; and (B) any remaining Earn-Out payment(s) shall be paid no later than 30 days following the expiration of the Earn-Out Period.

10.2 Audit Rights.

Seller Parties shall have the right to have an independent certified public accountant of nationally recognized standing inspect and audit the books and records of Buyer related to the Purchased Assets or the Business for the purpose of verifying Buyer's earn-out calculations pursuant to this ARTICLE 10 (the "*Earn-Out Audit*"). A Seller Party may exercise its right to the Earn-Out Audit (upon reasonable notice and during Buyer's normal business hours) once following the end of the Earn-Out Period as set forth in this ARTICLE 10. Seller Parties shall bear the expense of the Earn-Out Audit; provided, however, that in the event an Earn-Out Audit demonstrates that the amount of the Earn-Out as calculated by Buyer was more than 10% below the corrected number, Buyer shall bear the expense of such Earn-Out Audit.

ARTICLE 11. MISCELLANEOUS

11.1 Schedules.

(a) The disclosures in any Schedule, and those in any supplement thereto, relate only to the representations and warranties in the Section or paragraph of the Agreement to which such Schedule expressly relates and not to any other representation or warranty in this Agreement.

(b) If there is any inconsistency between the statements in the body of this Agreement and those in the Schedules (other than an exception expressly set forth as in the Schedules with respect to a specifically identified representation or warranty), the statements in the body of this Agreement will control.

(c) Nothing in the Schedules will be deemed adequate to disclose an exception to a representation or warranty made herein, unless the Schedules identify the exception with reasonable particularity and describes the relevant facts in reasonable detail.

(d) The mere listing (or inclusion of a copy) of a document or other item in a Schedule will not be deemed adequate to disclose an exception to a representation or

warranty made in this Agreement (unless the representation or warranty pertains to the existence of the document or other item itself).

11.2 Entire Agreement.

This Agreement, together with the Exhibits and Schedules hereto and the certificates, documents, instruments and writings that are delivered pursuant hereto, constitutes the entire agreement and understanding of the parties in respect of its subject matters and supersedes all prior understandings, agreements, or representations by or among the parties, written or oral, to the extent they relate in any way to the subject matter hereof or the Transactions, including the Letter of Intent, dated October 31, 2002, between Parent and Buyer. Except as expressly contemplated by ARTICLE 9, there are no third party beneficiaries having rights under or with respect to this Agreement.

11.3 Successors.

All of the terms, agreements, covenants, representations, warranties, and conditions of this Agreement are binding upon, and inure to the benefit of and are enforceable by, the parties and their respective successors and, to the extent of any assignment permitted under Section 11.4, the assigns of Buyer.

11.4 Assignments; Restrictions on Seller Dissolution.

No party may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of Buyer and Seller Parties; provided, however, that Buyer may (a) assign any or all of its rights and interests hereunder to one or more of its Affiliates and (b) designate one or more of its Affiliates to perform its obligations hereunder.

11.5 Notices.

All notices, requests, demands, claims, and other communications hereunder will be in writing. Any notice, request, demand, claim, or other communication hereunder will be deemed duly given if (and then three business days after) it is sent by registered or certified mail, return receipt requested, postage prepaid, and addressed to the intended recipient as set forth below:

If to Buyer:

ADS Alliance Data Systems, Inc.
Attn: General Counsel
17655 Waterview Parkway
Dallas, Texas 75252
Tel: (972) 348-5100
Fax: (972) 348-5150

If to a Seller Party:

eCPG.net, Inc., (dba Transora, Inc.)
Attn: General Counsel
10 South Riverside Plaza
Chicago, Illinois 60606

Tel: (312) 463-4348

Fax: (312) 466-1405

Copy to (which will not constitute notice):

Pillsbury Winthrop LLP

Attn: Jeffrey Schmidt, Esq.

1600 Tysons Boulevard

McLean, Virginia 22102

Tel: (703) 905-2000

Fax: (703) 905-2500

Any party may send any notice, request, demand, claim, or other communication hereunder to the intended recipient at the address set forth above using any other means (including personal delivery, expedited courier, messenger service, telecopy, telex, ordinary mail, or electronic mail), but no such notice, request, demand, claim, or other communication will be deemed to have been duly given unless and until it actually is received by the intended recipient. Any party may change the address to which notices, requests, demands, claims, and other communications hereunder are to be delivered by giving the other parties notice in the manner herein set forth.

11.6 Specific Performance.

Each party acknowledges and agrees that the other parties would be damaged irreparably if any provision of this Agreement is not performed in accordance with its specific terms or is otherwise Breached. Accordingly, each party agrees that the other parties will be entitled to an injunction or injunctions to prevent Breaches of the provisions of this Agreement and to enforce specifically this Agreement and its terms and provisions in any Action instituted in any court of the United States or any state thereof having jurisdiction over the parties and the matter, subject to Sections 11.7 and 11.12, in addition to any other remedy to which they may be entitled, at law or in equity.

11.7 Submission to Jurisdiction; No Jury Trial.

(a) **Submission to Jurisdiction.** Each party submits to the jurisdiction of any state or federal court sitting in Dallas County, Dallas, Texas, in any action arising out of or relating to this Agreement and agrees that all claims in respect of the action may be heard and determined in any such court. Each party also agrees not to bring any action arising out of or relating to this Agreement in any other court. Each party agrees that a final judgment in any action so brought will be conclusive and may be enforced by action on the judgment or in any other manner provided at law or in equity. Each party waives any defense of inconvenient forum to the maintenance of any action so brought and waives any bond, surety, or other security that might be required of any other party with respect thereto.

(b) **Waiver of Jury Trial.** THE PARTIES EACH HEREBY AGREE TO WAIVE THEIR RESPECTIVE RIGHTS TO JURY TRIAL OF ANY DISPUTE BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY OTHER AGREEMENTS RELATING HERETO OR ANY DEALINGS AMONG THEM RELATING TO THE TRANSACTIONS. The scope of this waiver is intended to be all encompassing of any

and all actions that may be filed in any court and that relate to the subject matter of the transactions, including, contract claims, tort claims, breach of duty claims, and all other common law and statutory claims. The parties each acknowledge that this waiver is a material inducement to enter into a business relationship and that they will continue to rely on the waiver in their related future dealings. Each party further represents and warrants that it has reviewed this waiver with its legal counsel, and that each knowingly and voluntarily waives its jury trial rights following consultation with legal counsel. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED ORALLY OR IN WRITING, AND THE WAIVER WILL APPLY TO ANY AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING HERETO. In the event of an action, this Agreement may be filed as a written consent to trial by a court.

11.8 Time.

Time is of the essence in the performance of this Agreement.

11.9 Dispute Resolution.

(a) Exclusive Procedure for Dispute Resolution. Any dispute arising out of or relating to this Agreement, including claims for indemnification pursuant to ARTICLE 9, shall be resolved in accordance with the procedures specified in Sections 11.6, 11.7, 11.9, and 11.12, which shall be sole and exclusive procedures for the resolution of any such disputes.

(b) Negotiation Between Executives.

(i) The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives of Seller Parties and executives of Buyer who, if possible, shall be at a higher management level than the individuals with direct responsibility for administration of this Agreement (the "*Negotiators*"). Any party may give the other parties written notice of any dispute not resolved in the normal course of business. Within 15 days after delivery of the notice, the receiving party shall submit to the others a written response. The notice and response shall include (i) a statement of each party's position and a summary of arguments supporting that position, and (ii) the name and title of the Negotiators and of any other person who will accompany them. Within 30 days after delivery of the disputing party's notice, the Negotiators shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. All reasonable requests for information made by one party to the others will be honored.

(ii) If the matter has not been resolved by these persons within 60 days of the disputing party's notice, or if the parties fail to meet within 30 days, any party may initiate mediation as provided below.

(iii) All negotiations pursuant to this clause shall be confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and state rules of evidence.

(c) Mediation. If the dispute has not been resolved by negotiation as provided above, the parties shall endeavor to settle the dispute by mediation under the then current Center for Public Resources (CPR) Model Procedure for Mediation of Business Disputes. The neutral third party will be selected from the CPR Panels of Neutrals, with the assistance of CPR, unless the parties agree otherwise.

(d) Litigation. If the dispute has not been resolved by non-binding means as provided herein within 90 days of the initiation of such procedure contemplated by Section 11.9 hereof, any party may initiate litigation (upon 30 days written notice to the other party); provided, however, that if one party has requested the others to participate in a non-binding procedure and the others have failed to participate, the requesting party may initiate litigation before expiration of such period.

(e) Provisional Remedies. The procedures specified in this ARTICLE 11 shall be the sole and exclusive procedures for the resolution of disputes between the parties arising out of or relating to this Agreement; provided, however, that a party, without prejudice to the above procedures, may file a complaint (for statute of limitations or venue reasons or to seek preliminary injunction or other provisional judicial relief), if in its reasonable judgment such action is necessary to avoid irreparable damage or to preserve the status quo. Despite such action the parties will continue to participate in good faith in following the dispute resolution procedures specified in this ARTICLE 11. Notwithstanding the foregoing, Buyer may, in its sole discretion, apply to any court of law or equity of competent jurisdiction and be entitled to specific performance and/or injunctive relief in order to enforce or prevent any violation of Section 7.5.

(f) Tolling Statutes of Limitation. All applicable statutes of limitation and defenses based upon the passage of time shall be tolled while the procedures specified in this ARTICLE 11 are pending. The parties will take such action, if any, reasonably required to effectuate such tolling.

(g) Performance to Continue. Each party shall continue to perform his or its obligations under this Agreement pending final resolution of any dispute arising out of or relating hereto; provided, that no amounts shall be paid pursuant to the Earn-Out to the extent such amounts are subject to set-off in accordance with Section 9.8.

11.10 Counterparts.

This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.

11.11 Headings.

The article and section headings contained in this Agreement are inserted for convenience only and will not affect in any way the meaning or interpretation of this Agreement.

11.12 Governing Law.

This Agreement and the performance of the Transactions and obligations of the parties hereunder will be governed by and construed in accordance with the laws of the State of Texas,

without giving effect to any choice of Law principles that may require application of any other Laws.

11.13 Amendments and Waivers.

No amendment, modification, waiver, replacement, termination or cancellation of any provision of this Agreement will be valid, unless the same will be in writing and signed by Buyer and Seller Parties. No waiver by any party of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, may be deemed to extend to any prior or subsequent default, misrepresentation, or Breach of warranty or covenant hereunder or affect in any way any rights arising because of any prior or subsequent such occurrence.

11.14 Severability.

To the extent that any provision of this Agreement may be deemed or determined to be invalid or unenforceable for any reason, such invalidity or unenforceability will not impair or affect any other provision, and this Agreement will be interpreted so as to most fully give effect to its terms and still be valid and enforceable; provided however, that any provision altered pursuant to this Section 11.14 will not result in a material adverse impairment of the rights or obligations of any party.

11.15 Expenses.

Except as otherwise expressly provided in this Agreement, Seller Parties, on the one hand, and Buyer, on the other hand, will each bear its own costs and expenses incurred in connection with the preparation, execution and performance of this Agreement, the Joint Marketing Agreement, and the Transactions including all fees and expenses of agents, representatives, financial advisors, legal counsel and accountants.

11.16 Construction.

The parties have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the parties and no presumption or burden of proof will arise favoring or disfavoring any party because of the authorship of any provision of this Agreement. Any reference to any federal, state, local, or foreign Law will be deemed also to refer to Law as amended and all rules and regulations promulgated thereunder, unless the context requires otherwise. The words "include," "includes," and "including" will be deemed to be followed by "without limitation." Pronouns in masculine, feminine, and neuter genders will be construed to include any other gender, and words in the singular form will be construed to include the plural and vice versa, unless the context otherwise requires. The words "this Agreement," "herein," "hereof," "hereby," "hereunder," and words of similar import refer to this Agreement as a whole and not to any particular subdivision unless expressly so limited. The parties intend that each representation, warranty, covenant, and condition contained herein will have independent significance. If any party has breached any representation, warranty, or covenant contained herein in any respect, the fact that there exists another representation, warranty or covenant relating to the same or similar subject matter (regardless of the relative levels of specificity) which the party has not breached will not detract from or mitigate the fact that the party is in breach of the first representation, warranty, or covenant. If any condition to Closing contained herein has not been satisfied in any respect, the fact that there exists another condition relating to

the same or similar subject matter (regardless of the relative levels of specificity) which has been satisfied shall not detract from or mitigate the fact that the first condition has not been satisfied.

11.17 Incorporation of Exhibits and Schedules.

The Exhibits (except for the Joint Marketing Agreement) and Schedules identified in this Agreement are incorporated herein by reference and made a part hereof.

11.18 Remedies.

Except as expressly provided herein, the rights, obligations and remedies created by this Agreement are cumulative and in addition to any other rights, obligations, or remedies otherwise available at law or in equity. Except as expressly provided herein, nothing herein will be considered an election of remedies.

11.19 Signatures.

(a) Delivery of a copy of a Transaction Document or such other document bearing an original signature by facsimile transmission (whether directly from one facsimile device to another by means of a dial-up connection or whether mediated by the worldwide web), by electronic mail in "portable document format" (".pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing the original signature, provided a copy bearing an original signature *on* paper is subsequently physically delivered. "Originally signed" or "original signature" means or refers to a signature that has not been mechanically or electronically reproduced.

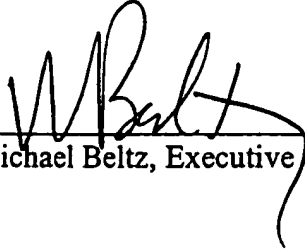
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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

BUYER

ADS ALLIANCE DATA SYSTEMS, INC.

By: _____


Michael Beltz, Executive Vice President

ATTEST:



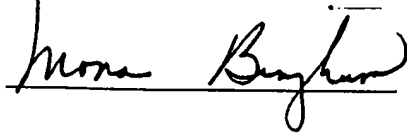
SELLER PARTIES

eCPG.net, INC. (dba TRANSORA, INC.)

By: _____

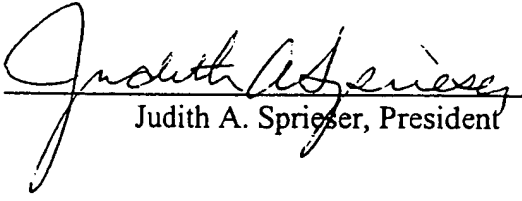

Judith A. Sprieser, Chief Executive Officer

ATTEST:

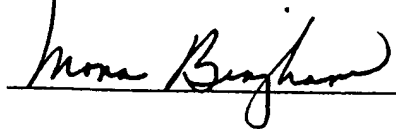


PLANETU, INC.

By: _____


Judith A. Sprieser, President

ATTEST:



[SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT]

Schedule 2.1
Purchased Assets

Subject to the terms of the Asset Purchase Agreement, the following are the Purchased Assets:

Seller Parties' interests in:

- the Patents set forth on Schedule 6.9(a);
- the Marks set forth on Schedule 6.9(b);
- the Copyrights set forth on Schedule 6.9(c);
- the Software set forth on Schedule 6.9(d) developed by Seller Parties;
- the Trade Secrets set forth on Schedule 6.9(e);
- the Contracts set forth on Schedule 6.10, excluding the NDAs referenced therein; and
- 19 Dell Latitude laptop computers with Pentium III processors, 10-18 gigabyte hard drives and 128 MB of RAM (THESE LAPTOPS ARE PROVIDED AS-IS AND WITHOUT WARRANTY OF ANY KIND)

Schedule 4.2(b)
Wire Instructions

Transora Wire Information for Payment:

Company: eCPG.net Inc. dba Transora

Bank: Wilmington Trust

Account# 800-2779-5579

Bank ABA# 052173464

Bank Address: Wilmington Trust FSB
452 Riverside Dr.
Salisbury, MD 21801

Schedule 5.3
Buyer Consents

None.

Schedule 6.3
Seller Parties' Consents

The following are the Contracts that are required to be disclosed under Section 6.10(b), for which consent may be required:

The Coca Cola Company [CONSENT RECEIVED]
Kraft Foods [CONSENT RECEIVED]

Schedule 6.6
Liabilities

Reference is made to the Assumed Liabilities referenced in Section 2.2 and the items listed in Schedule 6.19(h)(1).

Schedule 6.8(a)
Excluded Assets

Contractors set forth in Schedule 6.14, to the extent not assignable by Transora, the FirstLogic and Direct Connect software (provided that Transora will work with ADS to endeavor to transfer the license and current maintenance agreements to ADS), third party operating system and off-the-shelf software, and the infrastructure and related hardware, software and services provided pursuant to the Transition Services Agreement.

Schedule 6.8(b)
Current ADS Proposals for Operation of Business

Sara Lee Bakery Group Proposal of 11/22/2002,

Heinz Proposal of 11/22/2002

Kellogg's Proposal as of 11/22/2002

Smucker's Proposal (in contract form as of 11/27/2002)

Schedule 6.8(c)
Permitted Encumbrances

None.

Schedule 6.9(a)
Patents

1. Engel Patent (U.S. Patent no. 5,907,830, entitled "Electronic Coupon Distribution"), subject to the terms of the Invention Assignment Agreement between planet U, Inc. and American Consulting Corporation.
2. Coolsavings Patent (U.S. Patent no. 5,761,648, entitled "Interactive Marketing Network and Process Using Electronic Certificates"), subject to the terms of the Settlement Agreement and Cross License Agreement between planet U, Inc. and Coolsavings.com, Inc.
3. Coupcou/Nichtberger Patent (U.S. Patent no. 4,882,675, re-issued as U.S. Patent no. 34,915, entitled "Paperless System for Distributing, Redeeming and Clearing Merchandise Coupons"), and Canadian Patent no. 1, 276, 724, subject to the terms of the Patent License Agreement between Coupcou, Inc. and planet U, Inc.
4. Provisional Patent Application for "Secure Promotions", as indicated in attorney docket #5871.P001.

Schedule 6.9(b)
Marks and Domain Names

1. Marks:

- U-pons
- planetU

2. Domain Names:

A. Primary Domains

- www.planetu.com
- www.u-pons.com

B. Other Possible Domains

In addition, Seller Parties may have an ownership interest in the following domain names:

couponfraud.com
couponfraud.net
fc-inc.net
futcon.com
planetu.org
planitu.com
safewaystores.com
softpoints.com
softpoints.net
softpoints.org
ucoupon.com
umail.net
umerchant.com
united-planet.com
upons.com
uporium.com
uporium.com
utailer.com

Seller Parties agree to transfer and assign whatever ownership interest, if any, they have in the "Other Possible Domains" listed immediately above.

Schedule 6.9(c)
Copyrights

1. **Registered:** None
 2. **Unregistered:**
 - Source code to latest versions of the internally developed programming code for the custom software included in the Purchased Assets.
 - Any marketing and website materials that were internally developed as original works by planet U and Transora employees, excluding third party content used or contained therein.
-

Schedule 6.9(d)(1)
Developed Software

Consumer Application

Developers

JavaScript	- Rabin Pradhan, Ron Wezien
HTML	- Rabin Pradhan
JavaServerPages	- Ron Wezien
Java	- Ron Wezien, Joe Slone, Jon Spelbring, Dan Simon
SQL	- Ron Wezien, Joe Slone, Jon Spelbring, Dan Simon
Oracle	- Rick Sullivan

Consumer Response Application

JavaScript	- Jon Spelbring
HTML	- Jon Spelbring
JavaServerPages	- Jon Spelbring
Java	- Jon Spelbring
SQL	- Jon Spelbring
Oracle	- Rick Sullivan

Admin Application

JavaScript	- Jon Spelbring, Sudha Venkatesh, Dan Simon
HTML	- Jon Spelbring, Sudha Venkatesh, Dan Simon
JavaServerPages	- Jon Spelbring, Sudha Venkatesh, Dan Simon
Java	- Jon Spelbring, Sudha Venkatesh, Dan Simon
SQL	- Jon Spelbring, Sudha Venkatesh, Dan Simon
Oracle	- Rick Sullivan

Batch Programs

Hostdn	- Joe Slone
GiantEagleHostdn	- Sudha Venkatesh
GiantEagleReturnHostdn	- Sudha Venkatesh
RalphsHostdn	- Sudha Venkatesh
RalphsReturnHostdn	- Sudha Venkatesh
UponVendor	- Jon Spelbring
ReturnUponVendor	- Jon Spelbring

IDC	- Joe Slone
EXPERTOfferCust	- Jon Spelbring
EXPERTOfCuExpire	- Jon Spelbring
Eambatch	- Ron Wlezien
Eamcuppc	- Joe Slone
Architecture	- Joe Slone, Jon Spelbring, Dan Simon

Pre-Existing Code

Oracle - Database
 BEA - Weblogic Application Server
 iPlanet - Web Server
 Caucho Technology - Resin Application Server
 First Logic – Address Correction Software
 Direct Connect software

Schedule 6.9(d)(2)
List of Developers

Seller Parties have no information regarding the identity of the developers of the underlying Pre-Existing Code. The identity of the developers of the other applicable Software as indicated in Section 6.9(d) of the Agreement is set forth in Schedule 6.9(d)(1).

Schedule 6.9(d)(3)
Preexisting Code

- FirstLogic address correction software
- Oracle - Database
- BEA - Weblogic Application Server
- iPlanet - Web Server
- Caucho Technology - Resin Application Server
- DirectConnect software

Schedule 6.9(e)
Trade Secrets

None.

Schedule 6.9(h)(1)
Possible Infringement By Seller Parties on
Third Parties' Intellectual Property

- Response Reward Systems, Inc. (RRS) litigation from 2001
- Engel claim regarding Invention Assignment Agreement, per Mr. Engel's March / 2002 correspondence
- CoolSavings litigation – Settlement Agreement and Cross-license agreement are referenced in Schedule 6.9(a)
- Coupco claims of infringement – resolved per Patent License Agreement referenced in Schedule 6.9(a)
- Seller Parties are aware of third party patents that relate to electronic coupons, such as those held by Catalina, but is not aware of any claims that the Business infringes upon such patents.

Schedule 6.9(h)(2)

Possible Infringers of Seller Parties' Intellectual Property

- Coupons, Inc. has been contacted by Seller Parties regarding a possible license of the Engel patent.
- CoolSavings litigation, regarding CoolSavings possible infringement of the Engel patent, resolved per Settlement Agreement and Cross License Agreement referenced in Schedule 6.9(a).

Schedule 6.9(i)(1)
Other Software

Reference is made to generally available third party operating system and off-the-shelf software and the software identified as Preexisting Code in Schedule 6.11(d)(3).

Schedule 6.9(i)(2)

Intellectual Property Licenses Granted by Seller Parties

Reference is made to the customer and retailer Contracts and Intellectual Property licenses set forth in Schedule 6.10.

Schedule 6.9(j)
Employees Without Intellectual Property Contracts

None.

Schedule 6.10
Contracts

File Name	Title of Contract	Contract seller party	Date
Advertising.com	NDA	Transora	11/7/2002
Aventis Pasteur, Inc.	Targeted Marketing Services Agreement (Non-Redeemable Offers)	Transora	9/5/2002
	Promotion Event Specification Form	Transora	11/17/02 & 11/20/02
Coca-Cola North America	Targeted Marketing Services Schedule	Transora	8/30/2002
CoolSavings	Settlement Agreement between Cool Savings, Pep Boys not to sue PlanetU	planetU	6/30/2000
	Original signed Settlement Agreements	planetU	6/30/00
	NDA	Transora	9/12/2002
Coupco/Nichtberger	Patent License Agreement	planetU	1/14/1998
Food Lion	Company and Retailer Promotion Agreement	planetU	2/22/2000
Fred Meyer Jewelry	Targeted Marketing Services Agreement (Non-Redeemable Offers)	Transora	10/1/2002
Giant Eagle	Company and Retailer Promotion Agreement	planetU	5/20/1999
American Consulting Corporation	Invention Assignment Agreement	planetU	02/03/2000
Kraft Foods North America, Inc.	Targeted Marketing Services Schedule	Transora	8/26/2002
Kraft	Appendix C to Targeted Marketing Services Schedule (Specification Form)	Transora	11/8/2002
Kroger	Company and Retailer Promotion Agreement	planetU	5/7/2000
StartSampling, Inc.	NDA	Transora	5/6/2002

	Amendment to Licensee Agreement	planetU	4/30/02
	Amendment to Licensee Agreement	planetU	5/16/2002
	Amendment to Licensee Agreement	planetU	9/10/2002
YesMail	Statement of Work	Transora	9/13/02

Schedule 6.12

Insurance

Commercial Crime coverage provided by Travelers Casualty and Surety Company of America under Policy No. 103778031 expiring March 31, 2003.

Cyber Liability (Including Professional Errors & Omissions) coverage provided by Aon Financial Services Group, Inc. expiring March 31, 2003.

Directors' and Officers' Liability/Employment Practices Liability coverage provided by Illinois National Insurance Company under Policy No. 873-7607 expiring March 31, 2003.

Fiduciary Liability coverage provided by American International Companies under Policy No. 213-94-33 expiring March 31, 2003.

General Liability and Umbrella Liability coverage provided by CNA under Policy No. 1081165419 expiring March 31, 2003.

Property coverage provided by Chubb Group of Insurance Companies under Policy No. 0005-56-42 expiring March 31, 2002.

Worker's Compensation coverage provided by Aon Risk Services, Inc. under Policy No. WC 1 81165422 expiring March 31, 2003.

Schedule 6.13
Litigation

Reference is made to those items set forth in Schedule 6.19(h)(1) and Schedule 6.19(h)(2). In addition, reference is also made to the correspondence by News America Corporation with respect to planetU's purported termination of the agreement between News America Corporation and planetU, Inc.

Schedule 6.14
Active Employees

See Attachment.

Last	First	Job Title	Hire Date	Status	FLSA Status	Status	Annual Salary	Bonus when hired	Options	Last Increase Date	Last Increase Amount	Last Bonus Date	Last Target Bonus	Last Discretionary Bonus	Commissions Paid Year to Date	Benefit Level of Coverage	DOB	PTO Balance	Floating Holiday
Harbst	Rick	GM	8/14/00	Full-time	Exempt	Employee	\$ 300,000	100%	400,000	n/a	n/a	15-Oct-02	\$27,750	\$90,526	n/a	Fam	26-Nov-1963	3.37	2
Battle	Joseph	Account Executive	9/25/00	Full-time	Exempt	Employee	\$ 110,000	3.0% sales	25,000	01-Jul-02	(\$10,000)	12-Nov-02	n/a	n/a	\$23,110	Fam	15-Nov-1961	3.37	2
Bukovic	Lynne	Account Executive	1/2/01	Full-time	Exempt	Employee	\$ 110,000	3.0% sales	10,000	01-Jul-02	(\$5,000)	12-Nov-02	n/a	n/a	\$31,108	n/a	30-Jan-1965	2.37	2
Bulke	Mary	Operations Lead	1/29/01	Full-time	Exempt	Employee	\$ 170,000	35%	25,000	n/a	n/a	15-Aug-02	\$5,667	\$5,000	n/a	Emp	16-Jul-1966	5.37	2
Dombos	David	Customer Lead	8/1/01	Full-time	Exempt	Employee	\$ 130,000	40%	20,000	n/a	n/a	15-Aug-02	\$3,900	\$2,500	n/a	Emp	11-Nov-1955	7.37	2
Greene	Jennifer	Customer Operations	8/1/01	Full-time	Exempt	Employee	\$ 65,000	20%	5,000	n/a	n/a	15-Aug-02	\$2,167	\$2,500	n/a	Emp	31-Jan-1975	6.37	2
Matthews	Monica	Customer Operations	8/1/01	Full-time	Exempt	Employee	\$ 45,000	15%	2,000	n/a	n/a	15-Aug-02	\$1,500	\$2,500	n/a	Emp	1-Feb-1975	4.37	2
Penbroke	John	Customer Operations	4/2/01	Full-time	Exempt	Employee	\$ 145,000	35%	25,000	n/a	n/a	15-Aug-02	\$4,833	\$2,500	n/a	Emp + 1	17-Mar-1967	2.37	2
Pradhan	Rabin	DBA	2/5/01	Full-time	Exempt	Employee	\$ 65,000	10%	3,000	n/a	n/a	15-Aug-02	\$2,167	\$5,000	n/a	Emp	15-Oct-1978	12.37	2
Rands	Richard	Retail Integration	4/1/01	Full-time	Exempt	Employee	\$ 130,000	25%	15,000	n/a	n/a	15-Aug-02	\$4,333	\$10,000	n/a	Emp + 1	9-Oct-1942	10.37	2
Rubin	Tom	Business Operations	1/8/01	Full-time	Exempt	Employee	\$ 42,000	5%	500	01-Dec-01	\$2,000	15-Aug-02	\$1,400	\$10,000	n/a	Fam	25-May-1968	4.37	2
Sason	Marc	Business Operations	11/1/01	Full-time	Exempt	Employee	\$ 38,000	10%	1,500	n/a	n/a	15-Aug-02	\$1,267	\$2,500	n/a	Emp	3-Jul-1977	3.37	2
Staba	Chris	Customer Operations	8/1/01	Full-time	Exempt	Employee	\$ 70,000	20%	5,000	n/a	n/a	15-Aug-02	\$2,333	\$5,000	n/a	Emp + 1	11-Oct-1969	2.37	2
Sullivan	Richard	DBA	11/5/01	Full-time	Exempt	Employee	\$ 125,000	20%	12,000	n/a	n/a	15-Aug-02	\$4,167	n/a	n/a	Fam	14-Feb-1967	7.37	2
Tucker	Steven	QA	1/1/02	Full-time	Exempt	Employee	\$ 100,000	10%	4,000	n/a	n/a	15-Aug-02	\$2,260	\$10,000	n/a	Emp	6-Apr-1974	10.37	2
Wazien	Ron	Development	7/1/02	Full-time	Exempt	Employee	\$ 107,000	15%	2,000	n/a	n/a	15-Aug-02	\$3,667	\$5,000	n/a	Emp + 1	25-Oct-1960	12.37	2
Sone	Joe	Development Business		Full-time		Not Retained	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Blake	Bill	Operations		Full-time		Contractor	\$50.00 per hr	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Garretson	Marc	Creative Business		Part-time		Contractor	\$60.75 per hr	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Rowland	Nina	Business Operations		Full-time		Contractor	\$90.00 per hour	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Adlerne	Melissa	Business Operations		Full-time		Contractor would like to make into an employee	\$30.00 per hr	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA

Schedule 6.18
Customers, Total Sales and Top Ten Suppliers

Customers and Revenues for Preceding 12 months— See Attachment

Suppliers

- Oracle - Database
- BEA - Weblogic Application Server
- iPlanet - Web Server
- Caucho Technology - Resin Application Server
- First Logic - Address Correction Software
- Sterling Commerce - ConnectDirect software for communicating with Kroger
- YesMail - email distribution and list management

Customer		Offering	CY 2001			CY 2002														
			Nov-01	Dec-01		Jan-02	Feb-02	Mar-02	Apr-02	May-02	Jun-02	Jul-02	Aug-02	Sep-02	Oct-02					
Acosta Sales & Mkt	TMS		-			-	-	-	-	-	-	-	-	-	-	-	-	-	-	
	TMS																			
	TMS																			
Aventis Pasteur	TMS																			
	TMS																			
	TMS																			
Best Foods	TMS	955	490		481	-	-	-	-	-	-	-	-	-	-	-	-	-		
	TMS																			
	TMS																			
Blue Diamond	TMS				2,212	2,119	2,175	2,136	2,084	-	-	-	-	-	-	-	-	-		
	TMS																			
	TMS																			
Brita	TMS																			
	TMS																			
	TMS																			
Church & Dwight	TMS	-	6,111		-	6,010	-	-	-	-	-	-	-	-	-	-	-	-		
	TMS																			
	TMS																			
Coca Cola Bottling	TMS	-	-		-	-	250	-	-	-	-	-	-	-	-	-	-	-		
	TMS																			
	TMS																			
Crystal Geyser	TMS	-	-		-	-	-	-	-	-	-	-	-	-	-	-	-	-		
	TMS																			
	TMS																			
Cumberland Packing	TMS	-	-		-	-	-	-	-	-	-	-	-	-	-	-	-	-		
	TMS																			
	TMS																			
Food Lion	TMS	-	0		-	-	-	-	-	-	-	-	-	-	-	-	-	-		
	TMS																			
	TMS																			
Fred Meyer	TMS																			
	TMS																			
	TMS																			
General Mills	TMS	-	-		-	-	-	-	-	-	-	-	-	-	-	-	-	-		
	TMS																			
	TMS																			
Georgia Pacific	TMS	662	276		39	-	-	-	-	-	-	-	-	-	-	-	-	-		
	TMS																			
	TMS																			
Gla Russa	TMS	-	-		-	-	-	-	-	-	-	-	-	-	-	-	-	-		
	TMS																			
	TMS																			
Giant Eagle	TMS	-	-		-	-	-	-	-	-	-	-	-	-	-	-	-	-		
	TMS																			
	TMS																			
Glad	TMS																			
	TMS																			
	TMS																			
Harris Ranch Beef	TMS	-	-		-	-	-	-	-	-	-	-	-	-	-	-	-	-		
	TMS																			
	TMS																			
HJ Heinz	TMS	-	-		-	-	-	-	-	-	-	-	-	-	-	-	-	-		
	TMS																			
	TMS																			
Kal Kan	TMS	719	17		-	-	-	-	-	-	-	-	-	-	-	-	-	-		
	TMS																			
	TMS																			
Keebler	TMS	-	-		-	-	-	-	-	-	-	-	-	-	-	-	-	-		
	TMS																			
	TMS																			
Kellogg	TMS	-	-		-	-	-	-	-	-	-	-	-	-	-	-	-	-		
	TMS																			
	TMS																			
Kraft	TMS	-	-		-	-	-	-	-	-	-	-	-	-	-	-	-	-		
	TMS																			
	TMS																			
Kraft- Louis Rich	TMS	-	-		-	-	-	-	-	-	-	-	-	-	-	-	-	-		
	TMS																			
	TMS																			
Kroger	TMS	26,810	19,282		7,095	14,232	23,778	817	6,707	6,198	4,606	12,746	6,606	5,563						
	TMS																			
	TMS																			
Langer	TMS	965	781		-	806	934	837	808	-	-	-	-	-	-	-	-	-		
	TMS																			
	TMS																			
McNeil Consumer Healthcare	TMS																			
	TMS																			
	TMS																			
MISC	TMS	-	-		-	-	-	-	-	-	-	-	-	-	-	-	-	-		
	TMS																			
	TMS																			
Nancy's Speciality	TMS	657	240		358	338	363	167	132	20	-	-	-	-	-	-	-	-		
	TMS																			
	TMS																			
Novartis	TMS	3,612	1,525		-	-	-	-	-	-	-	-	-	-	-	-	-	-		
	TMS																			
	TMS																			
Ralphs	TMS	846	234		-	337	-	-	-	-	-	-	-	-	-	-	-	-		
	TMS																			
	TMS																			
Safeway	TMS	-	-		-	-	-	-	-	-	-	-	-	-	-	-	-	-		
	TMS																			
	TMS																			
Sara Lee	TMS																			
	TMS																			
	TMS																			
Sara Lee Bakery	TMS	-	-		1,845	143	-	-	-	-	-	-	-	-	-	-	-	-		
	TMS																			
	TMS																			
SC Johnson	TMS	-	-		-	-	-	-	-	-	-	-	-	-	-	-	-	-		
	TMS																			
	TMS																			
Unilever	TMS	915	19		-	-	-	-	-	-	-	-	-	-	-	-	-	-		
	TMS																			
	TMS																			
Wake Fern	TMS				-	-	-	-	-	-	-	-	-	-	-	-	-	-		
	TMS																			
	TMS																			

Schedule 6.19
Permits

None, other than corporate authorizations to do business.

Schedule 7.7(a)
Target Employees

Last Name	First Name	Active Employees	Status Immediately After Close
1. Herbst	Rick	Full-time	Full-time
2. Adrienne	Melissa	Contractor	Full-time
3. Battle	Joseph	Full-time	Full-time
4. Blake	Bill	Contractor	Contractor
5. Bukovic	Lynne	Full-time	Full-time
6. Burke	Mary	Full-time	Full-time
7. Dornbos	David	Full-time	Full-time
8. Garretson	Marc	Contractor	Contractor
9. Greene	Jennifer	Full-time	Full-time
10. Matthews	Monica	Full-time	Full-time
11. Pembroke	John	Full-time	Full-time
12. Pradhan	Rabin	Full-time	Full-time
13. Rands	Richard	Full-time	Full-time
14. Rowland	Nina	Contractor	Contractor
15. Rubin	Tom	Full-time	Full-time
16. Sason	Marc	Full-time	Full-time
17. Skiba	Chris	Full-time	Full-time
18. Slone	Joe	Half-time	Not retained
19. Sullivan	Richard	Full-time	Full-time
20. Tucker	Steven	Full-time	Full-time
21. Wlezien	Ron	Full-time	Full-time

Schedule 10.1(b)(ii)
List of Targeted Marketing Services Categories

Category	Number of Investors Participating	Category Rating	Category Value	High	Medium	Low
Acne Medication		Low	100000			1
Adhesive Bandages		Low	100000			1
Adult Incontinence Diapers		Low	100000			1
Adult Liquid Nutritionals		Medium	200000		1	
Air Fresheners	2	Low	100000			1
Alcoholic Beverages (non beer)		High	300000	1		
Alkaline Batteries		Medium	200000		1	
All Purpose Cleaners - Dilutable	4	Low	100000			1
All Purpose Cleaners - Spray		Low	100000			1
Aluminum Foil		Low	100000			1
Antacid		Medium	200000		1	
Anti-Gas Remedy		Low	100000			1
Baby Food		High	300000	1		
Baby Formula		High	300000	1		
Baby Lotion, Oil and Powder		Low	100000			1
Baby Wipes		Low	100000			1
Bacon	2	Medium	200000		1	
Baking Chocolate	2	Low	100000			1
Baking Mixes		Medium	200000		1	
Bar Soap and Body Wash	4	High	300000	1		
Bathroom Cleanser (Foam & Spray)		Low	100000			1
Bathroom Tissue		High	300000	1		
Batteries		Medium	200000		1	
Beans	2	Low	100000			1
Beer	2	High	300000	1		
Bleach		Medium	200000		1	
Breads & Rolls		High	300000	1		
Breakfast Pastries		High	300000	1		
Breakfast Syrup		Low	100000			1
Butter/Margarine		Low	100000			1
Canned Meals	3	Medium	200000		1	
Canned Meat		Low	100000			1
Canned Tuna		Low	100000			1
Carbonated Beverages	3	High	300000	1		
Cat Food - Dry		High	300000	1		
Cat Food - Wet		High	300000	1		
Cat Litter	5	Medium	200000		1	

Cat Treats		Medium	200000		1	
Charcoal Briquettes/Lighter Fluid		Low	100000			1
Cheese (excl. Cottage Cheese, Creamed, Sauce)		High	300000	1		
Chili		Low	100000			1
Chinese Cuisine/Ingredients		Medium	200000		1	
Chocolate Candy	3	Medium	200000		1	
Cigarettes		High	300000	1		
Cleansers (facial)	2	Medium	200000		1	
Cloth Replacement Wipes		Low	100000			1
Coating/Oven Mix		Low	100000			1
Cocoa	3	Low	100000			1
Coffee	4	Medium	200000		1	
Coffee - ready to drink (liquid)		Medium	200000	1		
Coffee Filters		Low	100000			1
Condiments	5	Low	100000			1
Confections		Medium	200000		1	
Contraceptives		Low	100000			1
Cookies	3	High	300000	1		
Cooking Oils		Low	100000			1
Cooking Spray		Low	100000			1
Cosmetics		Medium	200000		1	
Cottage Cheese		Medium	200000		1	
Cotton Balls/Cotton Swabs		Medium	200000		1	
Cough Suppressant		High	300000	1		
Cough/Cold		High	300000	1		
Crackers	3	High	300000	1		
Cream Cheese		Low	100000			1
Dairy/Non Dairy Creamer	2	Low	100000			1
Deli Lunch Meat		Low	100000			1
Deodorant	3	High	300000	1		
Dessert Toppings	2	Low	100000			1
Diapers		High	300000	1		
Dietary Drink Mixes		Low	100000			1
Dietary Supplements		Medium	200000		1	
Dinner Mixes		Medium	200000		1	
Dipping Sauces (Non-Mexican)		High	300000	1		
Dishwashing Detergent - Auto	2	Medium	200000		1	
Dishwashing Liquid	2	Medium	200000		1	
Disinfectant Spray		Low	100000			1
Disposable Cameras		Low	100000			1
Disposable Cups		Low	100000			1
Disposable Cutlery		Low	100000			1
Disposable Napkins		High	300000	1		
Disposable Plates/Bowls		Low	100000			1

Dog Food - Dry		High	300000	1			
Dog Food - Wet		High	300000	1			
Dog Treats		High	200000		1		
Drain Cleaner		Low	100000				1
Drinking Milk	2	Low	100000				1
Eggs/Egg Substitutes		Low	100000				1
Extracts & Food Colors		Low	100000				1
Eye Care		Low	100000				1
Fabric Softener	2	Medium	200000		1		
Facial Tissue		High	300000	1			
Feminine Hygiene	2	High	300000	1			
Film		Low	100000				1
Film Processing		Low	100000				1
First Aid Antiseptic		Low	100000				1
First Aid: Adhesive Bandages		Low	100000				1
Floor Cleaners/Wax		Low	100000				1
Flu Remedy		High	300000	1			
Foot Care		Low	100000				1
Frosting (prepared)		Low	100000				1
Frozen and Refrigerated Baked Goods, Pies		High	300000	1			
Fruit - Canned		Medium	200000		1		
Fruit - Frozen		Medium	200000		1		
Furniture Polish		Low	100000				1
Fz & Rfg Cookie and Brownie dough		Medium	200000		1		
Fz Dinner Mixes		Medium	200000		1		
Fz Novelties		Medium	200000		1		
Fz. Breakfast		Medium	200000		1		
Fz. Pizza		High	300000	1			
Fz. Prepared Meals	4	High	300000	1			
Gelatin		Low	100000				1
Greeting Cards		Low	100000				1
Grilling Sauces/Marinades		Low	100000				1
Gum	2	Low	100000				1
Hair Care - Hair Coloring		Low	100000				1
Hair Care - Shampoo/Conditioner	4	High	300000	1			
Ham		Low	100000				1
Herbs		Low	100000				1
Hosiery		Medium	200000		1		
Hot Cereal		High	300000	1			
Hotdogs	3	High	300000	1			
Ice Cream	2	Medium	200000		1		
Ice Cream Cones		Low	100000				1
Ingredients		Low	100000				1
Insect Repellent		Low	100000				1
Insecticides		Low	100000				1
Jelly/Preserves		Medium	200000		1		

Juice Drinks	4	High	300000
Laundry Detergent	3	Medium	200000
Laundry Stain Cleaners		Low	100000
Laxatives		Low	100000
Liquid Soap	2	Low	100000
Meal Replacement/Energy Beverage		Low	100000
Meat Snacks		Medium	200000
Mexican Dipping Sauces	3	High	300000
Mexican Foods/Ingredients		High	300000
Nasal Spray		Low	100000
Non Chocolate Candy	2	High	300000
Nutritional Bars (Power Bars)		Low	100000
Nuts	2	Low	100000
Oral Care (Mouthwash, floss, toothbrush, denture cream)		Low	100000
Oral Whitening Products		Low	100000
Oven Cleaner		Low	100000
Package Food Combinations (lunchables)		High	300000
Packaged Lunch Meat	3	High	300000
Pain Reliever		High	300000
Paper Towels	2	High	300000
Pasta		Medium	200000
Pasta Salad		Medium	200000
Pasta Sauce	3	Medium	200000
Peanut Butter	2	Medium	200000
Pickles/Relish		Low	100000
Pie Crust		Low	100000
Plastic Bags - Food		High	300000
Plastic Bags - Trash		Medium	200000
Plastic Containers	2	Medium	200000
Plastic Wrap		High	300000
Polishes	2	Low	100000
Popcorn		Low	100000
Potatoe Products - Non Frozen		Medium	200000
Potatoes - Frozen		High	300000
Poultry		Low	100000
Powdered Beverages		Low	100000
Powdered Dessert Mixes		Low	100000
Powdered Dip Mixes		Low	100000
Pure Juice	5	High	300000
Razor Blades		Low	100000
Ready to Drink Coffee		Low	100000
Ready to Drink Tea		High	300000
Rfg. Pasta and Sauces		Low	100000
Rfg. Prepared Meals (BBQ Beef, etc)		High	300000

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Rfg. Yogurt	3	High	300000	1		
Rice		Low	100000			1
RTE Cereal	4	High	300000	1		
Salad Dressing	2	Medium	200000		1	
Salty Snacks	4	High	300000	1		
Sandwich Crackers		High	300000	1		
Sausage	2	Medium	200000		1	
Scouring Cleanser		Low	100000			1
Scouring Pads & Sponges		Low	100000			1
Seafood Boil Mix		Low	100000			1
Seasoning Mixes		Low	100000			1
Seasonings		Low	100000			1
Shaving Products		Low	100000			1
Shelf Stable Meals	2	Low	100000			1
Skin Care	3	High	300000	1		
Smoking Cessation		Low	100000			1
Snack - Frozen		High	300000	1		
Snack Bars	3	High	300000	1		
Snack Cakes		Low	100000			1
Soup	3	High	300000	1		
Soup Bases & Mixes	3	Low	100000			1
Sour Cream		Low	100000			1
Specialty Coffee		Low	100000			1
Spices		Low	100000			1
Spoonable Dressing		Low	100000			1
Sport Drinks	2	High	300000	1		
Stuffing/Bread						
Crumbs/Croutons		Medium	200000		1	
Sun-Care		Low	100000			1
Sweeteners		Low	100000			1
Tea	3	Low	100000			1
Tea - Ready to Drink (liquid)		High	300000			
Toaster Pastries		High	300000	1		
Toilet Bowl Cleaners		Low	100000			1
Toilet Paper		High	300000	1		
Tomato Products (sauces, paste, tomatoes excluding pasta sauce)		Low	100000			1
Toothpaste	3	High	300000	1		
Topical Analgesics		Low	100000			1
Topical Anti-Biotic		Low	100000			1
Topical Anti-Itch		Low	100000			1
Vegetables - Canned		Medium	200000		1	
Vegetables - Frozen		Medium	200000		1	
Vegetarian Entrees		Medium	200000		1	
Vitamins		High	300000	1		
Water (Carbonated)	0	Low	100000			1
Water (Non Carbonated)		High	300000	1		
Whipped Topping	2	Low	100000			1

Window Cleaner		Medium	200000		1
			39000000	61	49
					107

EXHIBIT A

See Tab 8

EXHIBIT B

See Tab 9

EXHIBIT C

See Tab 10

EXHIBIT D

See Tabs ~~10~~ and ~~11~~

3

2

EXHIBIT E

See Tabs 4 and 5

EXHIBIT F

See Tab 6

EXHIBIT G

See Tab 7

ASSIGNMENT

WHEREAS, ADS Alliance Data Systems, Inc. and Alliance Data Systems Corporation, hereinafter referred to as the ASSIGNORS, each a **Corporation of Delaware**, having their principal place of business at 17655 Waterview Parkway, Dallas, Texas 75252, purport to be the owners of, and/or purport to have rights to, certain inventions or improvements for which applications for Letters Patent have been made as U.S. Patent Application Serial Nos. 60/416,981 (filed October 8, 2002) and 10/677,555 (filed October 2, 2003) entitled "Secure Promotions" (hereafter "Patent Property"); and

WHEREAS, **CoolSavings, Inc.**, hereinafter referred to as the ASSIGNEE, a **Corporation of Delaware**, having its principal place of business at 360 North Michigan Avenue, Chicago, Illinois 60601, is desirous of acquiring the entire right, title and interest in and to the said Patent Property, and/or any all rights to the Patent Property held by ASSIGNORS, in any and all countries;

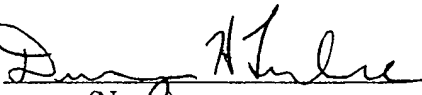
NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, and intending to be legally bound hereby, ASSIGNORS have sold, assigned, transferred and set over, and by these presents does hereby sell, assign, transfer and set over to said ASSIGNEE, ASSIGNORS' entire right, title and interest in and to said Patent Property and any and all continuations, divisions and renewals of and substitutes for said Patent Property and to and under any and all additional Letters Patent which may be granted on or as a result thereof in the United States and any and all other countries, and any reissue or reissues or extension or extensions of said Letters Patent, and the full right to sue for and recover damages recoverable for past infringement of the same, and for violations of provisional rights having arisen from any published application(s) for said Patent Property. ASSIGNOR further assigns to and authorizes said ASSIGNEE to file corresponding applications for Letters Patent in all countries, to be held and enjoyed by said ASSIGNEE, its successors, assigns, nominees or legal representatives, to the full end of the term or terms for which said Letters Patent respectively may be granted, reissued or extended, as fully and entirely as the same would have been held and enjoyed by ASSIGNORS had this assignment, sale and transfer not been made.

It is hereby covenanted that ASSIGNORS have not executed and will not execute any agreement in conflict herewith, and ASSIGNORS further covenant and agree that they will each time request is made and without undue delay, execute and deliver all such papers as may be necessary or desirable to perfect the title to said Patent Property in said ASSIGNEE, its successors, assigns, nominees, or legal representatives, and ASSIGNORS agree to communicate to said ASSIGNEE or to its nominee all known facts respecting said Patent Property, to testify in any legal proceedings, to sign all lawful papers to execute all disclaimers and divisional, continuing, reissue and foreign applications, to make all rightful oaths, and generally to do everything reasonably possible to aid said ASSIGNEE, its successors, assigns, nominees and legal representatives to obtain and enforce for its or their own benefit proper patent protection for said inventions or improvements in any and all countries, all at the expense, however, of said ASSIGNEE, its successors, assigns, nominees or legal representatives.

AND ASSIGNORS hereby authorize and request the Commissioner of Patents and Trademarks of the United States and any official of any country or countries foreign to the United States whose duty it is to issue patents on applications as aforesaid, to issue to said ASSIGNEE, as assignee of the entire right, title and interest, any and all Letters Patent for said Patent Property, including any and all Letters Patent of the United States which may be issued and granted on or as a result of any applications included in said Patent Property, in accordance with the terms of this assignment.

IN WITNESS WHEREOF, the undersigned, being properly authorized to execute this Assignment, hereunto sets their hand and seal.

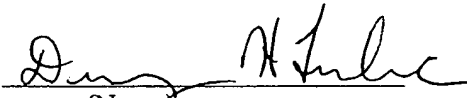
ADS ALLIANCE DATA SYSTEMS, INC.

By: 
(Name)

Its: EVP
(Title)

Date: 2/6/04

ALLIANCE DATA SYSTEMS CORPORATION

By: 
(Name)

Its: EVP
(Title)

Date: 2/6/04

STATE OF Texas :
: SS
COUNTY OF Collin :

On this 6th day of February, year of 2004, before me, the undersigned officer, personally appeared Dwayne Tucker, who acknowledged himself/herself to be the Executive Vice President of ADS Alliance Data Systems, Inc., a Delaware corporation, and that he/she as such Executive Vice President being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself/herself as Executive Vice President

Kelli W. Hunt
Notary Public



STATE OF Texas :
: SS
COUNTY OF Collin :

On this 6th day of February, year of 2004, before me, the undersigned officer, personally appeared Dwayne Tucker, who acknowledged himself/herself to be the Executive Vice President of Alliance Data Systems Corporation, a Delaware corporation, and that he/she as such Executive Vice President being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself/herself as Executive Vice President

Kelli W. Hunt
Notary Public





PHILADELPHIA
One Liberty Place, 46th Floor
Philadelphia, PA 19103
215-568-3100
Fax: 215-568-3439

SEATTLE
999 Third Avenue, Suite 1606
Seattle, WA 98104
206-332-1380
Fax: 206-624-7317

March 16, 2004

Mr. William J. Purcell
3076 Sorrelwood Drive
San Ramon, CA 94583

via UPS courier

STEVEN J. ROCCI
PHILADELPHIA OFFICE
215-864-8364
rocci@woodcock.com

Re: U.S. Patent Application S.N. 10/677,555
SECURE PROMOTIONS
Inventors: William J. Purcell and Edward M. Martin
Our Ref: CSAV-0015

Dear Mr. Purcell:

I write to you as patent counsel for Coolsavings.com. As you are aware, Coolsavings recently acquired certain assets of Alliance Data Systems (ADS), including assets of Transora and PlanetU. The acquired assets include the above pending patent application, which names you and Mr. Martin as co-inventors.

This letter follows up to correspondence between you and Mr. Schafer, of the Akin Gump law firm, and more recently between you and me, regarding this application. I understand from our recent e-mail correspondence that you prefer not to be involved in this matter, but I must make a written request that you execute a Declaration and Power of Attorney for this application. If you chose not to execute this document, then I ask that you extend the courtesy of letting me know of your decision in writing just as soon as possible, per the procedure set forth below. At that juncture, I will file a petition in the USPTO requesting that it accept the application without your signature.

We also need to take measures to formally reflect that Coolsavings is the legal owner of the application. I assume that, if you decline to execute the Declaration and Power of Attorney, then you will also decline to execute a formal, specific Assignment of the application from yourself to PlanetU, Transora, ADS and/or Coolsavings. Again, per the below, I ask that you advise me of your decision in this regard. Should you decline, then we will take appropriate measures to address this formality.

In accordance with the above, I have enclosed a complete copy of the application as filed (including specification, claims, abstract and drawings), for your review. I have also enclosed



Mr. William Purcell
March 16, 2004
Page 2

the Declaration and Power of Attorney, and Assignment documents (formal papers) for this application. I ask that you read the application and do one of the following:

(i) sign and date the formal papers in the spaces provided and return them in the postage-paid, return, pre-addressed U.S. Express Mail envelope or fax the executed documents to me at 215-568-3439 (please note that execution of the Assignment papers should be before a notary); or,

(ii) if you decline to execute these papers, please either sign and return the enclosed "Refusal to Execute Declaration" document or, write, e-mail or fax me to that effect.

If I have not heard from you by April 15, 2004, then I will assume that you have declined to execute the papers and we will proceed as outlined above. I would prefer that you convey your decision to me by one of the methods outlined above.

Of course, if you have any questions, please do not hesitate to contact me.

Sincerely,

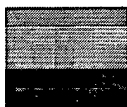
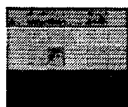
A handwritten signature in black ink, appearing to read 'Steven J. Rocci', written over a horizontal line.

Steven J. Rocci

Enc.

copy (w/o enc.):

Brad Aaron (CoolSavings, Inc.)
Guy R. Friddell, III (Landmark Communications, Inc.)
Thomas C. Inglima, Esq. (Willcox & Savage)

**Shipping**Welcome, Janis Calvo | [Logout](#)[My Settings](#)[→ Ship a Package](#)[→ Help](#)**Track by Tracking Number****View Details**

To view Proof of Delivery, please select the link.

Status: Delivered [Proof of Delivery](#)

Delivered on: Mar 18, 2004 9:00 A.M.

Signed by: FLORES

Location: RESIDENTIAL

Delivered to: 3076 SORRELWOOD DR
SAN RAMON, CA, US 94583

Shipped or Billed on: Mar 16, 2004

Tracking Number: 1Z W57 79X 01 9768 085 8

Reference Number(s): CSAV-0015, CSAV-0015

Service Type: NEXT DAY AIR

Information and services provided to My UPS users.

Package Progress:

Date	Time	Location	Activity
Mar 18, 2004	9:00 A.M.	SAN RAMON, CA, US	DELIVERY
Mar 17, 2004	9:43 A.M.	SAN RAMON, CA, US	RECEIVER NOT IN ON 1ST DELIVERY ATTEMPT
	9:04 A.M.	SAN RAMON, CA, US	OUT FOR DELIVERY
	6:33 A.M.	SAN RAMON, CA, US	ARRIVAL SCAN
	6:17 A.M.	OAKLAND, CA, US	DEPARTURE SCAN
	4:34 A.M.	OAKLAND, CA, US	ARRIVAL SCAN
	2:40 A.M.	ROCKFORD, IL, US	DEPARTURE SCAN
Mar 16, 2004	11:58 P.M.	ROCKFORD, IL, US	ARRIVAL SCAN
	10:36 P.M.	PHILADELPHIA, PA, US	DEPARTURE SCAN
	9:36 P.M.	PHILADELPHIA, PA, US	ARRIVAL SCAN
	9:05 P.M.	PHILADELPHIA, PA, US	DEPARTURE SCAN
	5:37 P.M.	PHILADELPHIA, PA, US	ORIGIN SCAN
	5:04 P.M.	PHILADELPHIA, PA, US	PICKUP SCAN
	2:36 P.M.	US	BILLING INFORMATION RECEIVED

Tracking results provided by UPS: Mar 22, 2004 9:12 A.M. Eastern Time (USA)

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**Shipment Receipt**

(Keep this for your records.)

Transaction Date 16 Mar 2004**Address Information****Ship To:**William J. Purcell
William J. Purcell
3076 Sorrelwood Drive
SAN RAMON CA 94583-5008**Shipper:**Woodcock Washburn LLP
Janis Calvo
215-564-8920
One Liberty Place
46th floor
Mailroom
Philadelphia PA 19103**Shipment Information****Service:**

UPS Next Day Air

*Guaranteed By:

10:30 A.M., Wed. 17 Mar. 2004

Shipping:

**18.90

Package Information**Package 1 of 1**

Tracking Number:

1ZW5779X0197680858

Package Type:

UPS Letter

Actual Weight:

Letter

Billable Weight:

Letter

Client Code:

CSAV-0015

Billing Information**Payment Method:**

Bill Sender: W5779X

Total:

All currencies in USD

**18.90

Note: The displayed rate is for reference purposes and does not include applicable taxes.

* For delivery and guarantee information, see the UPS Service Guide. To speak to a customer service representative, call 1-800-PICK-UPS for domestic services and 1-800-782-7892 for international services.

** Rate includes a fuel surcharge.

Responsibility for Loss or Damage

Unless a greater value is recorded in the declared value field as appropriate for the UPS shipping system used, the shipper agrees that the released value of each package covered by this receipt is no greater than \$100, which is a reasonable value under the circumstances surrounding the transportation. UPS does not accept for transportation and shipper's requesting service through the Internet are prohibited from shipping packages with a value of more than \$50,000. The maximum liability per package assumed by UPS shall not exceed \$100, regardless of the purchase of insurance for protection in excess of \$100. The maximum liability per package assumed by the applicable insurance company shall not exceed \$50,000 (less \$100). Claims not made within nine months after delivery of the package (six months for international shipments), or in the case of failure to make delivery, nine months after a reasonable time for delivery has elapsed (six months for international shipments), shall be deemed waived. The entry of a C.O.D. amount is not a declaration of value for insurance purposes. All checks or other negotiable instruments tendered in payment of C.O.D.'s will be accepted by UPS at shipper's risk. UPS shall not be liable for any special, incidental, or consequential damages.

All shipments are subject to the terms and conditions contained in the UPS Tariff and the UPS Terms and Conditions of Service, which can be found at www.ups.com.



INTELLECTUAL PROPERTY LAW

PHILADELPHIA

One Liberty Place, 46th Floor
Philadelphia, PA 19103
215-568-3100
Fax: 215-568-3439

SEATTLE

999 Third Avenue, Suite 1606
Seattle, WA 98104
206-332-1380
Fax: 206-624-7317

March 16, 2004

Mr. Edward M. Martin
1241 Buzini Court
Ripon, CA 95366

via UPS courier

STEVEN J. ROCCI

PHILADELPHIA OFFICE
215-864-8364
rocci@woodcock.com

**Re: U.S. Patent Application S.N. 10/677,555
SECURE PROMOTIONS
Inventors: William J. Purcell and Edward M. Martin
Our Ref: CSAV-0015**

Dear Mr. Martin:

I write to you as patent counsel for Coolsavings.com. Coolsavings recently acquired certain assets of Alliance Data Systems (ADS), including assets of Transora and PlanetU. The acquired assets include the above pending patent application, which names you and Mr. Purcell as co-inventors.

You may aware of previous correspondence with Mr. Purcell regarding this matter. However, I do not know whether there has been any correspondence with you. The purpose of this letter is to request that you execute a Declaration and Power of Attorney for this application; I have made a similar request of Mr. Purcell. If, for any reason, you chose not to execute this document, then I ask that you extend the courtesy of letting me know of your decision in writing just as soon as possible, per the procedure set forth below. At that juncture, I will file a petition in the USPTO requesting that it accept the application without your signature.

We also need to take measures to formally reflect that Coolsavings is the legal owner of the application. I assume that, if you decline to execute the Declaration and Power of Attorney, then you will also decline to execute a formal, specific Assignment of the application from yourself to PlanetU, Transora, ADS and/or Coolsavings. Again, per the below, I ask that you advise me of your decision in this regard. Should you decline, then we will take appropriate measures to address this formality.

In accordance with the above, I have enclosed a complete copy of the application as filed (including specification, claims, abstract and drawings), for your review. I have also enclosed the Declaration and Power of Attorney, and Assignment documents (formal papers) for this application. I ask that you read the application and do one of the following:



Mr. Edward M. Martin
March 16, 2004
Page 2

(i) sign and date the formal papers in the spaces provided and return them in the postage-paid, return, pre-addressed U.S. Express Mail envelope or fax the executed documents to me at 215-568-3439 (please note that execution of the Assignment papers should be before a notary); or,

(ii) if you decline to execute these papers, please either sign and return the enclosed "Refusal to Execute Declaration" document or, write, e-mail or fax me to that effect.

If I have not heard from you by April 15, 2004, then I will assume that you have declined to execute the papers and we will proceed as outlined above. I would prefer that you convey your decision to me by one of the methods outlined above.

Of course, if you have any questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink that reads 'Steven J. Rocci'.

Steven J. Rocci

SJR/jc

copy (w/o enc.):

Brad Aaron (CoolSavings, Inc.)
Guy R. Friddell, III (Landmark Communications, Inc.)
Thomas C. Inglima, Esq. (Willcox & Savage)

**Shipping**[→ Ship a Package](#)[→ Help](#)[Welcome, Janis Calvo](#) | [Logout](#)[My Settings](#)**Track by Tracking Number****View Details**

To view Proof of Delivery, please select the link.

Status: Delivered [Proof of Delivery](#)

Delivered on: Mar 17, 2004 10:14 A.M.

Location: FRONT DOOR

Delivered to: 1241 BUZZINI CT
RIPON, CA, US 95366

Shipped or Billed on: Mar 16, 2004

Tracking Number: 1Z W57 79X 01 9914 247 1

Reference Number(s): CSAV-0015, CSAV-0015

Service Type: NEXT DAY AIR

Information and services provided to My UPS users.

Package Progress:

Date	Time	Location	Activity
Mar 17, 2004	10:14 A.M.	CERES, CA, US	DELIVERY
	9:07 A.M.	CERES, CA, US	OUT FOR DELIVERY
	7:07 A.M.	CERES, CA, US	ARRIVAL SCAN
	6:03 A.M.	MATHER, CA, US	DEPARTURE SCAN
	5:23 A.M.	MATHER, CA, US	ARRIVAL SCAN
Mar 16, 2004	4:03 A.M.	LOUISVILLE, KY, US	DEPARTURE SCAN
	9:36 P.M.	PHILADELPHIA, PA, US	ARRIVAL SCAN
	9:05 P.M.	PHILADELPHIA, PA, US	DEPARTURE SCAN
	5:51 P.M.	PHILADELPHIA, PA, US	ORIGIN SCAN
	5:04 P.M.	PHILADELPHIA, PA, US	PICKUP SCAN
	2:42 P.M.	US	BILLING INFORMATION RECEIVED

Tracking results provided by UPS: Mar 22, 2004 9:11 A.M. Eastern Time (USA)

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[← Back to Tracking Summary](#)[↑ Back to Top](#)

**Shipment Receipt**

(Keep this for your records.)

Transaction Date 16 Mar 2004**Address Information****Ship To:**Edward M. Martin
Edward M. Martin
1241 Buzini Court
RIPON CA 95366-9578**Shipper:**Woodcock Washburn LLP
Janis Calvo
215-564-8920
One Liberty Place
46th floor
Mailroom
Philadelphia PA 19103**Shipment Information****Service:**

UPS Next Day Air

*Guaranteed By:

12:00 P.M., Wed. 17 Mar. 2004

Shipping:

**18.90

Package Information**Package 1 of 1**Tracking Number: 1ZW5779X0199142471
Package Type: UPS Letter
Actual Weight: Letter
Billable Weight: Letter
Client Code: CSAV-0015**Billing Information****Payment Method:**

Bill Sender: W5779X

Total:

All currencies in USD

**18.90

Note: The displayed rate is for reference purposes and does not include applicable taxes.

* For delivery and guarantee information, see the UPS Service Guide. To speak to a customer service representative, call 1-800-PICK-UPS for domestic services and 1-800-782-7892 for international services.

** Rate includes a fuel surcharge.

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All shipments are subject to the terms and conditions contained in the UPS Tariff and the UPS Terms and Conditions of Service, which can be found at www.ups.com.

Calvo, Janis (Woodcock Washburn)

From: Rocci, Steven J. (Woodcock Washburn)
Sent: Monday, March 22, 2004 10:07 AM
To: 'Bill@purcell.biz'; Rocci, Steven J. (Woodcock Washburn)
Cc: Calvo, Janis (Woodcock Washburn)
Subject: RE: Secure Promotions Patent Application

Mr. Purcell:

Thank you for your e-mail.

Coolsavings is required to act promptly in the United States Patent and Trademark office to avoid abandonment of this application. Accordingly, Coolsavings has no choice but to proceed to file a petition to accept this application without your signature.

Coolsavings had offered to enter into a dialogue, in part, in an effort to assist you in getting the advice that you desire regarding your rights and obligations, but, as we understand it, you have declined that invitation. If you have reconsidered your decision, please let me know by return email no later than March 26. If I have not heard from you by then, Coolsavings will file the petition and take the measures necessary to formalize the title issue.

Steve Rocci

-----Original Message-----

From: Bill Purcell (Purcell.biz) [mailto:Bill@purcell.biz]
Sent: Sunday, March 21, 2004 10:19 AM
To: Steven J. Rocci (Woodcock Washburn)
Subject: FW: Secure Promotions Patent Application

Mr. Rocci,

I am in receipt of your letter of March 16, 2004.

My response to your requests described in this letter is the same as my response to your previous March 2, 2004 email on this matter (copied below).

Additionally, your letter mentions that unless I take certain specific actions per your requests that you describe in the letter you will make certain assumptions and you will make certain requests of the Patent Office. I suggest that you not make such assumptions. I also request that neither you nor the Patent Office take any actions related to this application that could impact my rights or create for me any obligations unless and until such time as I understand what my rights and obligations are in this matter, and I have agreed to same.

Again, I'm not sure that I should be involved in this at this time.

Sincerely,

William Purcell

-----Original Message-----

3/22/04

From: Bill Purcell- Market6 [mailto:bill@Market6.com]
Sent: Wednesday, March 03, 2004 6:57 AM
To: Rocci, Steven J. (Woodcock Washburn)
Subject: RE: Secure Promotions Patent Application

I'm not sure that I should be involved in this at this time.
Thanks,
bill

-----Original Message-----

From: Rocci, Steven J. (Woodcock Washburn) [mailto:rocci@woodcock.com]
Sent: Tuesday, March 02, 2004 12:02 PM
To: 'bill@market6.com'
Cc: Rocci, Steven J. (Woodcock Washburn)
Subject: Secure Promotions Patent Application

Dear Mr. Purcell:

I am a patent attorney with the law firm of Woodcock Washburn LLP, Philadelphia, PA. I am writing to you on behalf of our client, Coolsavings.com.

Coolsavings.com recently purchased certain assets of Alliance Data Systems (ADS) relating to an entity formerly known as PlanetU.

One of the assets purchased by Coolsavings.com includes a pending patent application entitled Secure Promotions. I believe that you are familiar with this application, as the files that I have reviewed include e-mail correspondence between you and Richard Schafer, of Akin Gump, patent counsel for ADS, regarding the application. You may recall that the correspondence was for the purpose of obtaining your and Edward Martin's signatures on the formal papers (declaration and assignment) for the application.

Coolsavings.com is interested in resuming a dialog with you and Mr. Martin to determine if there is any way that we can bring this matter to an amicable close.

I am wondering if you would be kind enough to speak with me at your convenience so that we can determine how to resolve this matter. If you would prefer that I speak with any counsel that you have retained, I would be happy to do so.

I will be on vacation from Mar. 3 until Mar. 10, but I can try to call you (or your counsel) while I am away, or after I return. If you would be kind enough to let me know who, and when, I should call, I will try to do so.

Thank you in advance.

Steve Rocci

Calvo, Janis (Woodcock Washburn)

From: Rocci, Steven J. (Woodcock Washburn)
Sent: Monday, March 22, 2004 10:10 AM
To: Calvo, Janis (Woodcock Washburn)
Subject: FW: Correspondence

-----Original Message-----

From: Ed Martin [mailto:edmr10@charter.net]
Sent: Friday, March 19, 2004 8:17 PM
To: rocci@woodcock.com
Subject: Correspondence

I received your correspondence via UPS courier. I do not think I can participate at this time.

Schafer, Richard

From: Bill Purcell (bill@Market6.com) [bill@market6.com]
Sent: Friday, October 31, 2003 4:50 PM
To: Schafer, Richard
Subject: Re: your call

Richard,

I think I've identified the process correctly. I believe my counsel will need to review your opinion below, discuss it with me, discuss it with you, and then, possibly, take follow up steps (that may include reviewing documents).

I don't think that this is \$500 worth of work. I guess I should ask you..... if you were estimating the amount of time, and assuming your hourly rate, what would you recommend for a budget for this? If it is more than \$500, I don't think ADS should ask me to bear this cost.

I think there are some real and complicated issues here given your initial thoughts below. It sounds from your explanation that my obligations root from some interpretation of a combination of IP, corporate securities, and employment law. I may need to get expertise from all of those areas, and have those counsel all agree that I should be involved in this at this late date.

If I am to work on this, it will most likely be because my counsel informs me of an obligation for me to do so. I think that if you can present me with a document that I signed that describes my obligation, that possibly for \$500 I would be able to have my lawyer read the document, tell me what it means, and advise me what to do. I think that this is not the case, and your explanation of why you think that I'm obligated in this matter is much more complex. In my opinion, this is no where close to a \$500 legal issue.

For example, assuming your opinion in your point 1 below, and if I had an IP obligation to planetU and its shareholders, I still will need to understand what obligation I now have, three years after the transaction, to the current owner of the assets that were once owned by planetU.

Complicating this further is that I will not be taking the requested actions as an employee of planetU/Transora, but rather as an employee of Market6 (which operates in similar areas). I need to reconcile the obligations that I may have owed to my previous shareholders (which you suggest have carried through to the current owner of planetU's assets) against the IP obligations that I owe to my current employer and the shareholders of my current company. Given your explanation, these obligations may conflict.

Additionally, your second point assumes that I did agree at the time of the transaction that planetU owned IP rights associated with my employment. I can understand how such an obligation may create a requirement to take actions like what you are requesting at the request of Transora while I was employed by them for the year after the transaction that I worked for Transora (in which I was not asked to do anything like this related to this filing). I don't understand what my obligations are now to complete filings that benefit not planetU nor its acquirer, but a third party that I've never even met. I believe that this is a complicated securities law and employment law issue. I'm not disputing obligations that I had during my employment with planetU, I'm concerned about my obligations now.

11/12/2003

I don't recall signing up for a lifetime of unlimited patent filing services. Maybe I did, but that wasn't my understanding. My limited understanding of California employment law suggests that generally employment obligations end when employment ends unless there is an express written agreement to the contrary. I also understand how there may be some types of variations of this requirement when there is a sale of one company to another and the party involved may have substantially benefited from the sale (in that the compensation that came as a result of the transaction may trigger some level of on-going obligations for some limited period of time to the benefit of the acquirer). That wasn't the case. I made nothing on the planetU/Transora transaction.

You've requested that you have these conversations with my counsel, which I am definitely not opposed to. However, my recommendation to you is to either a) provide to me for my counsel's review a copy of all documents to which I'm a party that describes any on-going obligation in this matter. If you can do so, I will try to get it reviewed and hopefully stay within the \$500 budget that you provided to me, or b) substantially increase the budget of the legal fees which ADS will cover.

This is in no way an issue of my being greedy (I'm not benefiting). This is an issue of you not being able to provide to me the documentation that will be needed for me to stay within the original budget. I will need a pretty open ended budget to proceed given your explanations below of my obligations.

Kindly let me know when I will receive a copy of the signed document that describes my obligation, or let me know how you will revise the suggested budget to cover all of the expenses related to the IP, securities law, and employment law issues that you described below. I will need either this document or a mutual agreement about the budget prior to proceeding with the connection with my lawyer or continuing the dialog with me in this matter.

Sincerely,

bill purcell

----- Original Message -----

From: Schafer, Richard

To: Bill Purcell (bill@Market6.com)

Cc: Clonts, David R

Sent: Friday, October 31, 2003 10:22 AM

Subject: RE: your call

Bill,

Alliance agreed to reimburse you for up to \$500 of legal expenses for reviewing the assignment documents, etc. We would prefer your attorney invoice you, then Alliance will reimburse you up to the \$500 limit.

Richard A. Schafer

Akin Gump Strauss Hauer & Feld LLP

711 Louisiana Street

1900 Pennzoil Place, South Tower

Houston, Texas 77002

Direct phone: 713.220.8184

Direct fax: 713.220.2384

-----Original Message-----

From: Bill Purcell (bill@Market6.com) [mailto:bill@market6.com]
Sent: Friday, October 31, 2003 12:06 PM
To: Schafer, Richard
Subject: Re: your call

Perhaps it would make sense to involve counsel on this. I assume that he would need some time to research your points below, an hour for a conversation with me about it, the time on the phone with you, and any required follow up.

At one point you had indicated that my legal expenses would be covered in this matter. Could you please confirm that, as well as confirm the process that we would use to to this. As I understand that ADS is selling the division, I'd rather not have a payment process that might get caught up in the transaction. Can he just bill you directly?

bill

----- Original Message -----

From: Schafer, Richard
To: Bill Purcell (bill@Market6.com)
Cc: Clonts, David R
Sent: Friday, October 31, 2003 9:37 AM
Subject: RE: your call

Bill, we can certainly reschedule the call. At the moment, I'm available any time prior to around 4:00 PM your time. Would around 1:00 PM your time work for you?

Although we need to discuss this in more detail, there are at least two considerations that we see give you an obligation to sign the assignment:

1. As the CEO of PlanetU, you had a fiduciary duty to the company, which would require you to assign those IP rights to the company when they were created. That obligation would not terminate merely because a written assignment was not made prior to the termination of your position with PlanetU/Transora.
2. Also as the CEO of PlanetU, you signed various documents for the Transora acquisition, in which you represented that PlanetU owned IP rights, which would include this invention, even for applications filed afterwards. You also represented in those documents that all of the PlanetU employees, which would include yourself as the CEO, as well as Ed Martin, had in place employment agreements that required assignment of rights to PlanetU.

As I said in our conversation earlier today, if you think these conversations should be with your counsel, I'll be glad to comply, of course, if you'll identify him.

Richard A. Schafer
Akin Gump Strauss Hauer & Feld LLP
711 Louisiana Street
1900 Pennzoil Place, South Tower
Houston, Texas 77002
Direct phone: 713.220.8184
Direct fax: 713.220.2384

-----Original Message-----

From: Bill Purcell (bill@Market6.com) [mailto:bill@market6.com]

Sent: Friday, October 31, 2003 11:05 AM

To: Schafer, Richard

Subject: Fw: your call

Richard,

I re-checked my calendar, and I am tied up on Monday from 10-11:15 am PST. If you'd like to talk on Monday, can we find another time? That stated, perhaps we should defer this conversation until the issue below is addressed.

I still think we need to deal with the issue of what expressed obligations you understand that I have in this matter. I'm holding aside what voluntary steps I might take, I'm referring to what obligations I have as a result of a written agreement to which I'm a party. I think this needs to be understood prior to our discussion.

As I've indicated, I continue to work in this industry, and therefore I don't see how I would be personally advantaged by taking these steps, and I can foresee situations where I may become disadvantaged. If I previously have agreed to take certain steps after my employment with planetU (which ended in 2000) or planetu's acquirer (which ended in 2001), and if that agreement was assignable to an acquirer of my pervious employer, I think we can have a direct conversation about what I need to do following a review of that document by my counsel. If no such agreement exists (and I don't remember one existing), I need to understand why I should be involved in this effort at all at such a late date. I've been advised by my counsel to take this position.

Please advise if you or your client have been able to find any documents that spell out any obligations that I have in this matter. I've looked, and I can find none. If you don't have any such document, please let me know if you believe that I have any other formal obligations so that I can review those with counsel. I think that this should be done prior to our next conversation.

Thank you,

Bill Purcell

----- Original Message -----

From: Bill Purcell Market6

To: Schafer, Richard

Sent: Monday, August 11, 2003 8:39 AM

Subject: your call

Richard,

Sorry we didn't connect when you called..... I had to rush out to fed exp.

I'm on vacation until August 25, can we talk then?

in the mean time, I have had a brief chat with my counsel. He's strongly suggests that we determine if there is an obligation that exists between me and the company on this issue. If there is no such obligation, he wonders if there is a reason for me to proceed on this, as it could have the impact of limiting me in the future.

Could you please re-check to see if there is any documentation of a previous assignment of patent, either in my planetU employment records, or in the purchase agreement between planetU and Transora. If not, we may have difficulty proceeding unless there is a different reason other than a documented obligation which requires my involvement at this point. You're probably aware, but it's been over two and a half years since Transora acquired planet U.

Thanks,

bill

Bill Purcell

bill@market6.com

phone: (925) 968-0600

fax: (509) 479-9216

mobile (925) 351-3821

www.market6.com www.purcell.BIZ

alternate email address:

bill@purcell.biz and billpurcell8@yahoo.com

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Schafer, Richard

From: Ed Martin [edmr10@yahoo.com]
Sent: Tuesday, August 12, 2003 3:14 PM
To: rschafer@AKINGUMP.COM
Subject: Ed-Pons assignment request

I am out in the field on assignment and have not been able to respond to my personal e-mail. I am therefore using my Internet based account....


I had a discussion with Bill Purcell about a week ago regarding the status of this request. It is my preference to coordinate my actions in this matter with Bill, as he was my direct supervisor when this process was created. Additionally, this patent was never pursued during my employment with planetU or Transora, so I have not considered it as active.

In addition, there are several questions regarding the assignment as it would impact my current work in the promotions management process. My current company is directly involved in the promotion management space and i would want to ensure that there wouldn't be any conflict of interest with my current work. I am also concerned as to any future claims which may arise from this assignment.

Bill and I discussed the option of employing counsel to review the documents and felt that if we worked together we could reduce the costs for all parties and hopefully move to resolve this matter.

Ed Martin
1241 Buzzini Ct.
Ripon, CA 95366
209-599-4909

8/12/2003



Schafer, Richard

From: Clonts, David R
Sent: Monday, July 14, 2003 9:10 AM
To: Schafer, Richard
Subject: RE: EdPons application

keep me in the loop to make sure he does not get out of line

-----Original Message-----

From: Schafer, Richard
Sent: Thursday, July 10, 2003 10:43 AM
To: 'bill@purcell.biz'
Cc: Clonts, David R; 'Kellie Watts (KWatts@alldata.net)'; 'terjohns@alldata.net'
Subject: RE: EdPons application

Bill

1) I think the easiest thing will be for you simply to send me your attorney's invoice. I'll then pass it on to ADS for payment, up to the agreed amount.

2) If Ed requests it, I presume ADS will agree. However, he has not done so. Such a request on an assignment is extremely rare, so I don't expect him to do so. 99.99% of all inventors simply sign the assignment, particularly when they've already agreed to do so in an employment agreement.

3) As we've previously discussed, there are no previous assignment documents. I'm still attempting to get a copy of your employment agreement with Planet U from Transora; when I receive a copy, I'll forward a copy to you. You already have the non-provisional application, declaration, and assignment, which is everything I have except the provisional application itself. I'll have my secretary make a copy of the provisional application filing and forward it to you, although you did not sign anything on that filing, because no inventor signature is necessary for a provisional application. That way you can verify that I've made no changes to the specification or claims other than the minor corrections previously identified to you. If email is acceptable, I'll just have her scan the provisional into a PDF file and email that to you, to save time.

If your attorney has any questions, he's welcome to call me.

-----Original Message-----

From: bill@purcell.biz [mailto:bill@purcell.biz]
Sent: Wednesday, July 09, 2003 8:10 PM
To: Schafer, Richard
Subject: Re: EdPons application

thank you. A few of what I know may be many more detailed questions.

1) how should we handle the billing?

2) I speak with Ed occasionally, and did so this week. My hope is that the same offer would be extended to him, else it might become uncomfortably complex.

3) I know the first this that my lawyer will ask is "Can you give me copies of all documents related to the patent and any assignments that you've already signed to look at before we start". As I mentioned, due to our move, this might take me a long time, and I don't want to delay things. Could you send me a copy of what you have? my address is

bill purcell
3076 sorrelwood dr
san ramon, ca
94583

Thanks,

bill

----- Original Message -----

From: Schafer, Richard

To: 'bill@purcell.biz'

Cc: 'Kellie Watts (KWatts@alldata.net)'; 'Johnson, Teresa'; Clonts, David R

Sent: Monday, July 07, 2003 9:07 AM

Subject: RE: EdPons application

Bill,

ADS has authorized reimbursement of your legal expenses for review of the assignment of the application, limited to \$500, which we believe should suffice for such a review of such standard documents. Let me know if you have any further questions.

Richard A. Schafer

Akin Gump Strauss Hauer & Feld LLP

1900 Pennzoil Place, South Tower

711 Louisiana Street

Houston, Texas 77002

Direct phone: 713.220.8184

Direct fax: 713.220.2384

-----Original Message-----

From: bill@purcell.biz [mailto:bill@purcell.biz]

Sent: Saturday, July 05, 2003 10:16 AM

To: Schafer, Richard

Subject: Re: EdPons application

Richard,

Thank you for sending this.

As I mentioned on the phone, I am reluctant to move forward on any of this at this time unless I have counsel review the documents and advise me of their recommendations.

I'm sure all of this is a non-issue and I don't want to sound non-supportive of this effort, however as I mentioned, I continue to work in the same industry that this invention supports, and I need to be cautious. Frequently I'm asked to sign consulting or investor disclosures that require me to identify if I have other intellectual property under assignment to third parties. I need to make sure that I don't get into a minefield that might cause me difficulties.

As I mentioned, I assume that to move forward in this matter ADS will cover my legal expenses.

Please forward to me an agreement related to this so that I can review it.

Thank you,

Bill Purcell

----- Original Message -----

From: Schafer, Richard

To: 'William J. Purcell (bill@purcell.biz)'; 'Edward M. Martin (edmr10@charter.net)'

Cc: Clonts, David R

Sent: Thursday, July 03, 2003 4:29 PM

Subject: EdPons application

Bill and Ed:

I am attaching to this email the non-provisional patent application that we propose to file claiming priority to the provisional patent application that was filed on behalf of Planet U in 2002. Because this application claims priority to provisional application no. 60/416,981, which was filed on October 8, 2002, we must file this non-provisional application prior to **October 8, 2003**.

The application will be filed with the same drawings filed with the provisional application. These drawings are suitable as informal drawings for filing purposes. However, prior to issuance of the patent, formal drawings will need to be prepared and filed. The application itself is largely identical to the provisional application, with the exception of corrected references to UPC standards and IBM manuals, formatting, and a few minor grammatical changes.

Also enclosed are the following formal documents that must be executed and filed with the application, namely:

Declaration
Assignment

Both of you must review the enclosed application and formal documents before signing the formal documents. If all is in order, please return the application and executed formal documents so we can file the application.

If you have any questions, please call or email me.

Richard A. Schafer

Akin Gump Strauss Hauer & Feld LLP

1900 Pennzoil Place, South Tower

711 Louisiana Street

Houston, Texas 77002

Direct phone: 713.220.8184

Direct fax: 713.220.2384

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recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this document in error and that any review, dissemination, distribution, or copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately by e-mail, and delete the original message.

Schafer, Richard

From: Schafer, Richard
Sent: Thursday, July 10, 2003 7:14 PM
To: 'bill@purcell.biz'
Cc: Clonts, David R; 'Kellie Watts (KWatts@alldata.net)'; 'terjohns@alldata.net'
Subject: RE: EdPons provisional application

Bill

While I don't know anything about your employment dates, etc., if it was filed after you left planetU, then I would assume that the invention was conceived and the provisional was written while you were employed by them, then filed afterwards. I have no information about the original disclosure date or the contents of the original disclosure, for that matter, so I have no idea when you and Ed disclosed the invention to planetU or when the application was actually written. For all I know, the application was prepared while you were working there, then sat around in a drawer for a while until someone decided to file it after you left. My hope is that you and Ed did actually read the provisional application at some point and that it accurately reflects your and Ed's invention. If you think the application does *not* actually reflect the invention, I'd rather hear that now than later, however.

Assuming you and Ed conceived the invention at *some* time during your employment at planetU and made the disclosure that eventually resulted in the provisional application, your employment agreement would have (again, presumably, given I don't have a copy) provided for planetU to have the right to file the application, even after you had left their employ. A provisional application has no documents that require an inventor's signature, so you would not have had to sign anything as part of the filing process, or necessarily even be informed when the actual filing took place. In contrast, a non-provisional application requires the inventor to sign a declaration that he's read the application, hence your present involvement.

I hope that answers your questions. If not, then please let me know.

Richard A. Schafer

Akin Gump Strauss Hauer & Feld LLP
1900 Pennzoil Place, South Tower
711 Louisiana Street
Houston, Texas 77002
Direct phone: 713.220.8184
Direct fax: 713.220.2384

-----Original Message-----

From: bill@purcell.biz [mailto:bill@purcell.biz]
Sent: Thursday, July 10, 2003 6:56 PM
To: Schafer, Richard
Subject: Re: EdPons provisional application

Richard,

I'm a little confused. How did I file this.... I wasn't employed by Transora/planetU at that time?

bill

| ----- Original Message -----
| **From:** Schafer, Richard

8/12/2003

To: William J. Purcell (bill@purcell.biz)
Cc: Clonts, David R ; Kellie Watts (KWatts@alldata.net) ; 'terjohns@alldata.net'
Sent: Thursday, July 10, 2003 9:16 AM
Subject: EdPons provisional application

Bill,

As promised, here is a copy of the provisional application as file October 8, 2002.

Richard A. Schafer
Akin Gump Strauss Hauer & Feld LLP
1900 Pennzoil Place, South Tower
711 Louisiana Street
Houston, Texas 77002
Direct phone: 713.220.8184
Direct fax: 713.220.2384

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